

THE



WORKS

OF

JEREMY BENTHAM,

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HIS EXECUTOR,

JOHN BOWRING.

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PREFACE.

WHEN the proposed Bill, of which the ensuing sheets are designed to give a view, first fell into my hands, I was employed in finishing a work of some bulk, in which I have been treating the subject of *punishment* more at large. In that work, I should have come in course to speak of the particular species of punishment which is the subject of this bill. In that work, therefore, several of the observations would have come in course to be introduced, which I have here subjoined to several parts of the text I have been abstracting: and being there digested into a method, and forming a part of a system to which I have been giving that degree of regularity which it has been in my power to give it, would probably have come with more force, and shown to more advantage, in company with the rest. On this account, had I been at liberty with respect to time, I should rather have wished to have published the whole together first, before I had detached from it these scattered fragments. The publication, however, of the proposed bill in question, with the intelligence that accompanied it, effectually precluded any such option. To have delayed the publication of this part of my principal work, till the bill had been brought in and passed, would have been to delay it till that season had been over, in which, if in any, such parts of it as relate to the present subject, promised to be most useful.

When I had read Mr. Howard's book on Prisons, one fruit of it was, a wish still more earnest than what I had been led to entertain from theory, to see some general plan of punishment adopted, in which solitary confinement might be combined with labour. This capital improvement (for as such I cannot help regarding it) in penal legislation, I sat wishing, with scarce any mixture of hope, to see carried into execution: for somehow or other, the progress that had been already made in it near two years ago in the House of Commons,* had escaped me. How great, then, was my pleasure and surprise at seeing a plan (which had already been pre-announced by the Judges in their circuits,) originating, as appeared, from a high department in administration, and carrying with it every presumption of its being adopted; in which, not only almost all the excellent matter of the book I have been speaking of is engrafted, but many capital improvements superadded! This incident gave me fresh alacrity, and suggested fresh designs.

This bill (or draught of a bill, as it is called in the title, not having been as yet brought into Parliament) is accompanied with a Preface, short, indeed, but ample, masterly, and instructive. In this preface, an instructive but general idea is given of the theoretic principles upon which the plan of the bill is grounded; and a more ample and detailed account of the documents which furnished materials and reasons for the several provisions of detail. A history of the steps that have been taken in the formation and prosecution of the plan is also interwoven.

Upon this it will naturally enough be asked, What was the occasion, and what can be the use of the ensuing sheets? why publish them? I answer — Because the bill itself is in fact *not* published:† — because, were it published, the contents of it are not quite so perspicuous as I imagined they might be made: — because I hoped to be a means, in some degree, of forwarding the good purposes of it, by stating to the public, more in detail than it would have been competent either to the text or to the preface to have done, the reasons on which the leading provisions in it seemed to be grounded, and by suggesting a few hints in the way of correction or addition.

"Not perspicuous?" I think I hear somebody exclaiming:—"what Act of Parliament was ever more so?" None, I must confess, that I can think of: but this affords me no

* See Preface to the Bill, p. 5.

† I mean, in the sense ordinarily put upon the word *published*. It is not sold at any of the shops; it has no bookseller's nor printer's name; it seems to have been designed for the perusal, not of the world at large, but only of Members of Parliament, and of the Author's private friends.

reason for retracting. The legislator, one would indeed naturally suppose, might (and if he might, why should not he?) speak his own meaning so plainly, that no one could speak it plainer; so concisely, that no one could render his expression more concise; in such a method, both as to matter and form, that no one could cast it into a better. He might, one should think: for what should hinder him? Is he the less qualified for making himself understood and remembered by being a legislator? If he did, then, as he might do, expositions would be useless, and abridgments would be impracticable. But does he?—consult the twelve immense volumes of Acts of Parliaments; to which another is in the way to add itself every three years.

Let me not all this while be understood to reflect censure on a great master of language, on whom nothing less than censure is intended. Had custom (that is, the law of Parliament) left him at liberty to follow the dictates of his own intelligence, little or nothing, I suppose, would have been left to any one else to add to it on the score of perspicuity: if (supposing the bill and the preface to come, as they purport to do, from the same hand,) it be reasonable to judge what he *could* have done, from what he *has* done. On this head I have scarce an idea of making any greater improvement on his draught than what he could have made, if he had pleased, and would, if he had thought proper. He thought, I suppose (if it occurred to him to propose the subject to his thoughts,) that one plan of reformation was enough to proceed upon at once. On the present occasion, his business was to reform a part of the system of punishment adopted by our legislation; not to go about reforming the legislative style. He has therefore, of course, conformed in a great measure to the style in use, though with a considerable defalcation from the usual complement of tautologies and redundancies: his publication being a draught of the very instrument which it is intended should pass into an act.

The present abstract of it having no pretensions to be considered in that light, I have held myself at liberty to afford the reader many of those assistances which parliamentary men, in all their authoritative publications, seem so studious to reject. I have therefore prefixed numbers to the sections: I have given them marginal contents: I have made frequent breaks in the letter-press: I have numbered, every now and then, the leading articles, which, though included together in one section, seemed to claim each of them a separate measure of attention; and, by allotting to each a separate line, have displayed them more distinctly than if lumped together in one unbroken mass These, and other such typographical assistances, are no more than what it is common enough for writers, on the most ordinary subjects, to give their readers: nor would they be looked upon as singular, or indeed worth mentioning, but with respect to those intricate and important discourses which stand most in need of them.

Another, and rather more serious task, has been to break down the long sentences, into which this composition (being intended to be passed into an Act of Parliament) could not but have been cast into a multitude of shorter ones: to retrench the tautologies and superfluities with which this composition, though remarkably scanty on this head (being intended for an Act of Parliament,) could not but abound. In the course of these operations, I have here and there ventured to make some little alteration in the order of the several matters contained in the same section: but with entire sections I have nowhere taken the like liberty.

This abstract, then, (to mention a more general use that may be made of it) will of itself be sufficient to prove, that a sentence of any given length is capable of being cast into as many sentences, and, consequently, that each sentence is capable of being made as short as there can be occasion to desire. It is therefore of itself sufficient to divest the long-windedness of our *legislative* (one may say in general of our *legal*) style, of the plea of necessity, the only one which a man could think of urging in its favour. Had this been even my principal object, I should of all others have wished for a bill like this to work upon, for the same reason that grammarians take the works of Pope, and Swift, and Addison, for examples of solecisms in grammar.*

But to return. By the means above mentioned I will venture to hope, and that without any pretensions to make it a ground of vanity, that this abstract may be found to read somewhat more pleasantly than even the bill itself; and that on this head the reader, who means only to take a general view of the bill, and who is not in that line of duty or of study which would lead him to weigh words and syllables, may, as far as he thinks he can depend upon the fidelity of this copy, find it answer his purpose as well as the original.

I am sorry I cannot give equal satisfaction to his curiosity with respect to the Preface; in which the elegance of a style, which is the Author's own, has been at full liberty to display itself, unfettered by technical forms and prejudices. This I must not transcribe, nor can presume to imitate. The uncouth piles of parliamentary composition have not often been graced with such a frontispiece.

* See Bishop Lowth's Grammar, *passim*.

doing further mischief to the community during the continuance of it; but not in so great a degree as the confinement incident to servitude. It has always been easier for a man to return from transportation, than to escape from prison.

5. It answered, indeed, every now and then, the purpose of *reformation:* But by what means? By means of the servitude that was a part of it. It answered this purpose pretty well; but not so well upon the whole, under the uncertain and variable direction of a private master, whose object was his own profit, as it may be expected to answer under regulations concerted by the united wisdom of the nation, with this express view.

Section II. provides in general terms for the erection of houses for the purposes of confinement and labour throughout England and Wales. These houses are to be entirely separate from all other public habitations, whether destined for the custody or punishment of offenders, or for the maintenance of the honest poor. The legal appellation they are directed to be called by, is that of *Houses of Hard Labour*.

Observations.—It might, perhaps, be as well to call them *Hard-Labour Houses*, or *Labour-Houses*, at once. This, or some other equally compendious, is the name that will undoubtedly be given them by the people at large; the tendency of popular speech being to save words and shorten names as much as possible. Such a name should be analogous to the names *Rasp-huys* [Rasping-house,] and *Spin-huys* [Spinning-house,] in use in Holland; and, in short, to our English word *Work-house*. The technical name would by this means be the same as the popular. This would, *pro tanto*, save circumlocution, and guard against error in law proceedings. Where departing from the popular forms of speech is not necessary, it is always inconvenient. So much for an object, which, perhaps, may be thought to be hardly worth the words that have been spent upon it.

Section III. is designed to make provision for the raising of the monies to defray the charges of purchasing ground and building; and it prescribes the proportions in which such monies, when raised, are to be distributed among the districts established in the next section for the purposes of the act.* These proportions it takes from the number of convicts that have been ordered for transportation, in each county, within the compass of a year, upon an average taken for seven years last past. A blank is left for the particular fund out of which the monies are to issue.

Observations.—The contribution by which these monies are to be raised, is made, we see, not a local, but a general one. A local tax, however, is that which seemed most obviously to suggest itself, since the expenditure is local; but a general one appears to be much preferable. Had the tax been local, it would have been raised upon the plan of the county taxes; it would by that means have fallen exclusively upon householders bearing scot and lot. But the benefit of it, be it what it may, is shared indiscriminately among the whole body of the people. Add to this, that the sums of money requisite for this purpose will probably be large. These, were they to be raised at once, in the several districts, in the manner of a county tax, would be apt to startle the inhabitants, and prejudice them against the measure.

As to the proportion in which the supplies are to be distributed among the several districts, this is taken, we see, from the average number of convicts. This was an ingenious way of coming at the extent it would be requisite to give to the respective buildings, and the terms allotted would naturally be proportioned to the extent. Rigid accuracy in this apportionment, does not seem, however, to have been aimed at. According to the method taken, the allowance to the smaller counties will be somewhat greater in proportion than to the larger. There are a great many counties whose average number is settled at *one:* the computation does not descend to fractions. This, if it be an error, is an error on the right side.

For two of the towns that are counties of themselves, no average number of convicts, I observe, is stated: these are, Newcastle-upon-Tyne and Haverfordwest.

Upon turning to the table subjoined to the bill, it appears, that at Haverfordwest there have been no convicts at all within the time in question. At Newcastle-upon-Tyne, the average is stated at five. The omission in the bill seems therefore to be accidental.

Section IV. provides for the payment and application of the monies mentioned in the preceding section. They are directed to be paid to committees of justices,† or their order, and applied to the building of the houses above mentioned. The deficiencies, if any, in the provision thus made, are to be borne afterwards by the districts.

By Section V., all England, including Wales, is cast, for the purposes of this act, into districts of a new dimension.‡ This division is made commensurate to the division into circuits, as well as to that into counties. A certain number of these districts are included in each circuit; and each district includes one or more counties. Towns, that

* See Table, col. 8th, p. 34.

† See Sect. VI.

‡ See Table, cols. 2 & 4.

A

VIEW

OF THE

HARD-LABOUR BILL.

THIS Bill has two capital objects: 1*st*, To provide a new establishment of Labour-houses all over England; 2*dly*, To extend and perpetuate the establishment already set on foot, for the confinement of convicts, to labour upon rivers. It consists of sixty-eight sections. The fifty-two first are employed upon the former of the above objects: the seven following upon the latter: and the remaining nine upon certain customary provisions of procedure, and a few other matters that apply alike to both.

First with regard to the establishment of Houses of Hard Labour. The first twenty sections are employed in making provision for the erection of the buildings, and for the appointment of the magistrates and other officers to whom the management of that business is committed. The remaining thirty-two sections are employed chiefly in prescribing the regimen to be observed in them when built.

So much for the general outline of this regular and well digested plan. Let us now take a view of the sections one by one.

The first Section, or Preamble, states the general considerations which determined the author to propose the establishments in question. These considerations are, the insufficiency of transportation for the purposes of example and reformation; the superior efficacy of a course of confinement and hard labour; and the unfitness of the present houses of correction for that purpose.

Observations.—Here would naturally be the occasion for a commentator to dilate more particularly than it would have been in character for the bill itself to have done, upon the inconveniences of the old punishment of transportation, which it meant to supersede, and the advantages of the new mode of punishment, which it is the object of it to introduce. This I shall have occasion to do at large hereafter; stating in course the advantages and disadvantages of each: but a slight and immethodical sketch is as much as the present design gives room for.

The punishment of transportation, in its ordinary consequences, included *servitude*, the punishment here proposed to be substituted in the room of it. At all events, it included *banishment*. These two it comprehended professedly and with design; besides an uncertain, but at any rate a very afflictive, train of preliminary hardships, of which no account was taken; amongst others, a great chance of producing death.

Taking it all together, it had a multitude of bad properties; and it had no good ones, but what it derived from servitude, or which are to be found in the latter punishment in a superior degree.

1. In point of proportion it was *unequal:* for a man who had money might buy off the servitude.* With regard to the banishment, it was again unequal; for nothing can be more unequal than the effect which the change of country has upon men of different habits, attachments, talents, and propensities. Some would have been glad to go by choice; others would sooner die.

2. It was *unexemplary:* what the convicts suffered, were it much or little, was unknown to the people for whose benefit it was designed. It may be proved by arithmetic, that the purpose of *example* is, of all the purposes of punishment, the chief.

3. It was *unfrugal:* it occasioned a great waste of lives in the mode, and a great waste of money in the expenses, of conveyance.

4. It did answer indeed, in some degree, the purpose of *disabling* the offender from

* In virtue of the Statute 4 Geo. I. c. 2, the Court used to contract with some person to convey the convict to the place of destination: thereupon the convict is made over "to the use of" the contractor and "his assigns," who are declared in general terms to "have a property or interest in" his "service," for the time specified in the sentence.

where to the judges on their circuits; except that, in the Welsh district, they are to be certified, not to any of the Welsh judges, but to those of Chester: in case of their disapproval, a second order is to be made, and so *toties quoties:* so also if the spot pitched upon be such as cannot be purchased under the powers given by the act.* With regard to the choice of the spot, it gives some directions. The committees are required to have regard to

1. The healthiness of the situation.
2. The facility of getting water.
3. The *nearness* to some trading town.
4. But to avoid choosing any place *within* a town, if any other convenient place can be found.
5. To give the preference to a place surrounded with water, if in other respects healthy and proper.

Observations.—With regard to the places of meeting, it seems rather extraordinary, that in the Welsh district, a place so far from central as Chester should be appointed. This obliges the whole body of committee-men from Wales to travel out of their principality; and a Pembrokeshire justice, who has to traverse all North and South Wales, may have, perhaps, near two hundred miles to go before he reaches the place of his destination. This inconvenience, indeed, is open, in some measure, to a remedy, by the power given to the committees to choose the place of their adjournment; but at any rate, be the place ever so central, in so large a district, it cannot but be very remote from the abodes of the greater part of the committee-men. On this account, more especially if the Welsh district is to remain undivided, might it not be proper to allow to the committee-men, at least to such as had to travel out of their own counties, a small sum (were it no more than ten shillings a-day) to help to indemnify them for their expenses? To many a magistrate, who might, in other respects, be better qualified for the business than a richer man, the expense (to say nothing of the trouble) of making frequent journies to such a distance as he might have occasion to travel to, might be an objection sufficient to prevent his acceptance of the office. There seems, at any rate, to be much more reason for giving a salary to these committee-men, than to persons to be appointed visitors to the labour-houses;† since the visitors *may* be taken from the neighbourhood of the house, and the committee-men *must*, many of them, come from a great distance. Suppose the allowance were to be sixpence a-mile (the distance to be ascertained by the oath of the traveller), and a sum not exceeding ten shillings a-day, so long as the committee continues sitting?

The directions respecting the choice of the spot are well imagined, and strongly mark the judgment and attention of the author. His ideas on this matter seem to quadrate pretty exactly with "the singular and well-directed researches" (as he styles them) of Mr. Howard, to whose merits, as a zealous and intelligent friend of human kind, it is difficult for language to do justice.

One direction is, that a preference be given to a spot surrounded with water, if it be in other respects healthy and proper. Unless the water be *running* water, it is not very likely to be healthy.

Section XII. appoints a nominal proprietor, to whom the ground, when purchased, is to be conveyed. This person is to be the town-clerk, for London; the clerk of the peace, for Middlesex; the clerk of assize of the circuit, for the other English districts; with a blank left for the Welsh; and for this purpose the officers in question are respectively constituted bodies corporate.

Observations. — After such a provision, might it not be necessary, or would it be superfluous, to provide that any action might be brought by the committee in the name of any of the officers therein named, without naming the person who holds the office? This is a precaution taken in some acts. The occasion, if any, which may make it necessary, is that of a vacancy happening in any of those offices, at a time when it is requisite to bring (suppose) an action of trespass, for any encroachment or other trespass committed upon the spot thus to be made the property of the public. The trespass is committed (suppose) at a juncture that does but just admit of an action's being brought in such time as to be tried at the next assizes. The county is one of those in which the assizes are held but once a-year. To obviate this difficulty, if there be one, why might not the committee be empowered to bring any such action in their own name? in short, why might not the committee themselves be the body corporate? This would save circuity; since whatever is done by the officer above mentioned, must be by their direction, and under their controul.

Section XIII. gives a proportion for determining the size of the several houses. They are to be large enough to contain *three* times the average number of convicts in a year, it being supposed that each convict will continue in them three years upon an average.

It likewise gives some directions with respect to the apartments. Each house, with its appurtenances, is to contain,

1. Lodging-rooms for the convicts.
2. Storehouses and warehouses.
3. An infirmary, with a yard adjoining.
4. Several cells or dungeons.

* See Sect. XVII. & XX.
† See Sect. XXII.

are counties of themselves, are put upon a footing, in this respect, with counties at large. London and Middlesex form each a district by itself. The whole principality of Wales, together with Cheshire and Chester, are included in one district. The whole number of districts is nineteen. The reason it gives for this junction of the counties is, that it will serve to lessen the expense.

Observations.—The circuit divisions, it seems, were thought too large; the county divisions too small; besides that the latter are unequal. This is the case more particularly with the towns that are counties of themselves, in comparison with some of the larger shires. The use of making the districts less than the circuits, and at the same time larger than the counties, is the adjusting the buildings to a convenient size. An establishment for the reception of a large number of persons may be conducted, as the preambular part intimates, at a proportionably less expense, than an establishment for the reception of a small number. The uses of making them less than the circuits, are two:—1*st*, The lessening the expenses of conveying the convicts from the place of trial to the place of punishment; 2*dly*, The lessening the trouble and expense of the justices, who are to travel out of their own counties, to the town where they are to meet to carry the act into execution. It is doubtless on the former principle, that we are to account for the comprising the twelve Welsh counties, together with Cheshire and the city of Chester, in one district; for in this district, extensive as it is, the average number of convicts has been found to be less than in any other. On the two latter principles, it may seem rather inconvenient that this district should be so large. It is to be hoped, on this account, that the situation chosen for the labour-house for this district will be as central as is consistent in other respects with convenience.

Section VI. establishes the committees of justices, who are to be appointed by the general sessions of their respective counties, to meet together for the purposes of carrying this act into execution at a particular place within each of the districts, within which their respective counties are included:* and it settles the proportion which the number of committee-men in each county is to bear to the number of committee-men in every other. These committees are empowered to appoint stated meetings (giving ten days notice) and to make adjournments. The committee-men are to be appointed at the next general sessions after the passing of this act.

Observations.—The power of sending justices as committee-men is given, we may observe, to all the counties at large, in various proportions, from one to five inclusive, likewise to all the town-counties except three—Berwick, Chester, and Haverfordwest. Whether these omissions are accidental or designed, is more than I can take upon me to conjecture.

Section VII. provides against any failure in the sessions to appoint committee-men, or in the committee-men to take upon them their office. If at the next general sessions after the passing of the act, no committee-men should be appointed, or not enough, or if any should refuse, power is given to the *custos rotulorum* to supply the deficiency within three months.

Observations.—This provision seems to proceed on the supposition, that in some places the measure of the bill may prove unpopular among the country magistrates. By way of a spur to them, this power is therefore given to the *custos rotulorum:* but may it not be possible, especially in some of the remote counties (suppose the Welsh counties) that even the *custos rotulorum* may be tinctured with the local prejudices? It should seem there could be no harm, rather than there should be a gap in the execution of the act, in substituting the Lord Chancellor to the *custos rotulorum*, in the same manner as he is substituted to the sessions.

Section VIII. gives the sessions the power of changing their committee-men from year to year: also of supplying vacancies at any time when they may happen.

Observations.—For conformity's sake, might not this latter power, in default of the sessions, be given to the *custos rotulorum?* and, (if such an addition were to be adopted) in his default, to the Lord Chancellor?

Section IX. requires the committees to appoint each a clerk and treasurer, with such salaries as they shall think reasonable, removeable at pleasure: the treasurer to give security in proportion to the sum likely to come into his hands.†

Section X. appropriates the monies to be received by the committees, or their treasurer, to the uses of the act.

Section XI. appoints the place and time of the first meeting of the several committees;‡ empowering them (after choosing their chairman, clerks, and treasurer) to adjourn to any other time and place within the same district. It then directs them, at this or any subsequent meeting, to make choice of a piece or pieces of ground to build on, one or more for each district. The orders for this purpose are to be certified in London and Middlesex to the King's Bench, and else-

* See Table, cols. 5 & 3.

† See Table, col. 8.

‡ Ibid. col. 3.

another account, however, the lodging-rooms are not quite so answerable to the design, as a place on purpose, since something of the effect depends upon the *strangeness* of the place; and upon its being known to be appropriated to a penal purpose.

After all, it does not seem advisable to rest the whole of the punishment altogether upon the ground of terror, since terror is obliterated by familiarity. To make up a uniform complement of punishment, it is found necessary to have recourse to other circumstances of distress; such as the hard diet appointed by this bill. This consideration makes it the less necessary to be at any inconvenient expense in screwing the sentiment of terror up to the highest pitch.

Section XIV. directs, that as soon as a spot of ground shall have been purchased, advertisements shall be inserted by the committees in the local newspapers, for builders to give in plans, with proposals and estimates: that a plan, when agreed upon by the committee, shall be presented to the judges as before;* and that, after their approbation, signified in writing, the committee may contract with the architect, and superintend the execution.

Sections XV. XVI. XVII. XVIII. and XIX. are taken up with a set of regulations, which, though very necessary, are collateral to the main purposes of the act, being employed in giving the usual system of powers requisite to effectuate purchases to be made for public purposes. With regard to these, it will be sufficient to give a very general sketch of the contents.

Section XV. removes the disabilities that proprietors of certain descriptions lie under to alien.

Section XVI. provides for the distribution of the purchase-money among the parties interested.

Section XVII. prescribes the usual course for bringing unwilling proprietors to compliance.

Section XVIII. gives the usual powers for settling disputes concerning the value of the spot, by the verdict of a jury.

Observations.—In settling the fine to be imposed on witnesses in case of contumacy, it limits it, on the side of diminution, to twenty shillings, and on the side of increase to ten pounds. This provision seems liable to an inconvenience to which fines imposed by statute are very apt to be liable, that of the *punishment's* proving, in many instances, *less than equivalent to the profit of the offence.* A witness, we shall say, knows of a circumstance, not notorious in its nature, that tends to diminish the value of the land: or, let the circumstance be notorious, one witness alone is summoned, his design of failing not being suspected. The value in question being the value of the fee-simple, it will be somewhat extraordinary, if the difference made by such a circumstance be not more than ten pounds. In such case, the owner, indemnifying the witness, is *sure* of gaining more than ten pounds, with only a *chance* of losing a sum between ten pounds and twenty shillings. A case might be figured, though not so natural an one, in which either the witness or one of the parties might have an inducement to suppress a circumstance that tended to *increase* the value of the lands.

On the other side, the danger is greater but the inconvenience less. The public does not suffer so much by a charge affecting the public purse, as an individual by a loss affecting his purse to the same amount.

Would there be any improper hardship in obliging the party in this case (as he is in so many more cases of greater inconvenience to him) to be examined upon oath?

If proper evidence cannot be got at one time, it ought to be got at another. The trial, therefore, should be adjourned; or rather, to prevent private applications to the jurymen, a new trial should be appointed. Power should be given in such case to compel the appearance of the contumacious witness by arrest; and if at last he appears and is examined, the natural punishment for his offence would be the being subjected to the costs of the preceding trial; since, if any part of the charge were not borne by him by whose delinquency it was occasioned, it must fall upon somebody who was innocent. This punishment, however, ought to be open to mitigation in consideration of his circumstances; since a charge to this amount, though it might be a trifle to one man, might be ruin to another.

In order, however, to ground a warrant for the apprehension of a witness who, on a former trial, had made default, an averment upon oath should be exacted from the party on whose behalf the warrant is applied for, that in his belief the person whose testimony is required is a material witness.

In justice to the author, it may be proper, in this place, to observe, that the deficiencies, if such they should be thought, which the above proposals are calculated to supply, are not chargeable upon this bill any more than they are upon all the acts in the statute-book that have correspondent passages.

Section XIX. provides, as is usual, that the costs of such a trial shall await the verdict.

Section XX. makes a saving for dwelling-houses and pleasure-grounds.†

* See Sect. XI.

† It would save paper were the six last sections generalized by an act on purpose. The same thing may be observed respecting a string of provisions at the end of the bill.

5. A chapel.
6. A burying-ground.
7. Apartments for the officers.

Observations.—To the above accommodations, it might, perhaps, be not amiss to add a *garden*, to supply the house with vegetables. The laborious part of the work might be done by the prisoners themselves, who might be employed in it, either some few of them for a constancy, or all of them occasionally. In the latter case, the privilege of being thus employed might constitute an indulgence to be given in the way of reward, as it would be an agreeable relief from their ordinary domestic labour.* It seems probable, that a part of the labour might be more economically employed in this way, than upon the ordinary business of the house; even though the prime cost of a wall to inclose the garden were taken into the account.

With regard to the "cells or dungeons," as they are called, there are some cautions that seem highly necessary to be observed. That, for the punishment of the refractory, there should, in every such house, be some places of confinement, under the *name* of dungeons, seems perfectly expedient: at the same time that it is altogether inexpedient there should anywhere be any place that should partake in all respects of the *nature* of those pestiferous abodes.

The purposes for which dungeons seem in general to have been calculated (I mean such purposes as are justifiable,) are two: *safe custody*, and *terror*. The first must, in all cases, and the second may, in many cases, be desirable. But in aiming at these two purposes, another highly mischievous effect has unintentionally been produced; the exclusion of fresh air, and, as one consequence of it, the exposure of the room to perpetual damps. These apartments have been contrived under ground; hence there have been no lateral outlets, but the entrance has been at top through a trap-door. By this means the air has remained almost continually unchanged; being breathed over and over again, it has soon become highly unfit for respiration, and having in a short time dissolved as much of the damp as it could take up, the remainder has continued floating without any thing to carry it off. The pernicious consequences of such a stagnation, in generating the most fatal and pestilential diseases, have been inferred from theory,† and have been but too fully verified by experience and observation.‡

The business is, then, to make the necessary provisions for the purposes of safe custody and terror, without excluding the fresh air. To effect the first of these purposes, other means in abundance are afforded upon the face of the bill, as it stands at present (and if these be not sufficient, more might be afforded) by the structure and regimen of the prison. Some expedients relative to this design will be suggested in the course of these observations.

With regard to *terror*, the chief circumstance by which a dungeon is calculated to answer this purpose, is the exclusion of daylight. In a dungeon, this effect is produced by a constant and unalterable cause — the subterraneous situation of the place: but the same effect may be produced more commodiously, by means which might be applied or not, according as they are wanted, and that without excluding the fresh air. The means I am speaking of are very simple: Air travels in all directions; light only in right lines. The light, therefore, may be excluded without the air, by adapting to the window a black scuttle inflected to a right angle. If the door be made on the side opposite to the window, there will be as much draught as if the window opened directly into the air without the scuttle. Light might also be prevented from coming in at the door, by a return made to it in the same manner. By these means the prisoner's ordinary apartment, or any other apartment, may be made as gloomy as can be desired without being unhealthful.

I do not deny but that the terrors of a dungeon may depend in some degree upon the circumstance of its being under ground. In the imaginations of the bulk of men, the circumstance of *descent* towards the centre of the earth is strongly connected with the idea of the scene of punishment in a future life. They depend, in some measure, likewise, upon the circumstance of *stillness;* and the stillness may, at the same distance from a sounding body, be made more perfect in a dungeon than in an ordinary room: the uninterrupted continuity of the walls, at the same time that it excludes fresh air and daylight, serving also to exclude sound. But I cannot look upon the first of these circumstances of terror as being of that importance, as to warrant the paying so dearly for it as must be paid by the exclusion of wholesome air, which is so apt to change a punishment, meant to be slight and temporary, into a capital one. As to the purpose of stillness, it might be answered in a nearly equal degree, by building cells (which, at any rate, should be *called* dungeons) at a distance from the house. If the utmost degree of stillness were thought not to be absolutely necessary to be insisted on, a man's own lodging-room might at any time, by the contrivance above mentioned, be fitted up for the purpose. On

* Mr. Campbell, superintendent of the Thames convicts, employs a part of the ground he has the management of, in raising vegetables for their use.

† See, with respect to the effects of air tainted with respiration, Priestly on Air, vols. 1 & 2. With respect to damps, Fordyce's Elements of the Practice of Physic, title *Catarrh*, and Hamilton's Essays.

‡ See Howard on Prisons, *passim.*

their own labour. This profit should be the gross profit, because that depends upon themselves; not the clear profit, because that depends upon the economy of the governor. Such a provision would have a double good effect — on the welfare of the public at large, in making their labour more productive, and on their own happiness, by making them take a pleasure in their business.

It is to be observed, however, that this regulation can have effect only in the case where the produce of the labour of one man can be distinguished from that of the labour of another. From a passage in section 27th, it looks as if the notion of the author were, that it could be done in all kinds of manufactures. But this, I fear, is hardly the case. If not, would it or would it not be worth while to restrict the employment of the convicts to such manufactures in which it *could* be done? Where it cannot, the profit that each man can reap from his own labour will be lessened in proportion as the number of his comrades is increased. To illustrate this,

	By the Day.	By the Week.
Let the value of the gross produce of each man's labour be, upon an average, . .	6*d*.	3*s*.
Let the profit allowed him be one-sixth, ...	1*d*.	6*d*.
If he has five comrades, whose work is blended indistinguishably with his own, so that there are six persons in all to share the profit of his labour, his share will be but one-sixth of that one-sixth, that is, ...	$\frac{1}{6}$ of 1*d*.	1*d*.

He shares, it is true, in the profit upon their labour; but over this he has not that command that he has over his own. He knows, therefore, that he cannot depend upon it: if he could depend upon it, it would not be worth his while to exert his own.

A question that occurs here is, in what manner shall the workmen be let in to participate of the profits? Shall he be enjoined a certain task without profit, and then be allowed the whole profit upon the overplus? or, shall he be enjoined a less task, and then be allowed a share only in the profit upon the overplus? or, shall he be allowed a share, but of course a less share, upon every part of the produce of his labour, be it less or more? All these three expedients appear to be practised in different foreign work-houses: the first (or possibly the second) in the great house of correction at Ghent;* the second, in the house of correction at Delft in Holland;† the third, in the first great house of correction in Hamburgh.‡ The first, however, is liable to this objection: if the task be such, as any man of the least degree of adroitness can perform, it must, to some of the most adroit, be a very slight one: to such persons the reward will be a very lavish one; more, certainly, than is necessary, perhaps more than is expedient. If it be such as requires more natural adroitness than falls to the share of every body, some will be altogether excluded from the reward. The second expedient, too, will, in a greater or less degree, be liable to the one or the other of these objections. The third is free from both: this, therefore, seems to be the preferable one of the three.

As to the making the emoluments of the governor bear a constant proportion to the quantity of labour, the best way seems to be, to give him so much *per cent.* upon the produce of it, at the same time insuring it not to fall short of such or such a sum; suppose one hundred pounds a-year. The sum it is thus insured at must, on the one hand, be *as much* as is requisite to induce a competent person to undertake the charge: on the other hand, it must not be so much as appears likely to come near the probable profit that might be made from the percentage upon the produce of the labour. If this profit were to be less than the salary allowed in lieu of it, or indeed, if it were but little more, it would not make it worth his while to bestow the trouble it might take him to improve that fund to the best advantage.

Section XXIV. gives power to the committees to "increase, diminish, discontinue, or vary the number of officers," with the approbation of the judges as before; "except by taking away or discontinuing the offices of

"1. Visitor.
"2. Governor.
"3. Chaplain.
"4. Surgeon or Apothecary."

Observations.—Possibly the meaning might have been more clearly expressed by giving the power to suppress any of the officers mentioned in section 22d, (except as herein is excepted) or create any new ones, or alter the number of officers in each office. Thus ample, at least, I take the powers to have been, that were meant to be conferred.

Section XXV. establishes the economical powers of the governor.

1. It constitutes him a body corporate.

2. It empowers him to contract for the articles wanted in the house: to wit,

1. For clothing, diet, and other necessaries, for the use of the convicts.

2. For implements and materials of any manufacture they may be employed in.

3. It empowers him to carry on such manufacture, and to sell the produce.

4. It empowers him to draw on the treasurers of the several counties included within

* See Howard, 143. † Ib. 132. ‡ Ib. 116.

So much concerning the ground-plot and the buildings. Next come the provisions relative to the *regimen* of the labour-houses: these occupy the thirty-two following sections, all but six, from the thirtieth to the thirty-fifth inclusive, which concern the disposal of convicts, previous to the commencement of their punishment.

Section XXI. provides, that when the houses are ready, or nearly so, the committees shall appoint officers, lay in stock, and establish regulations in the cases not provided for by the bill: with power at any time to make additions and alterations: every regulation to be approved of by the judges afore mentioned.

Section XXII. enumerates the different classes of officers to be appointed for each labour-house: empowers the committees to make removals and supply vacancies, and to exact security for the due execution of the respective offices.

These officers are to be,

1. Two visitors.
2. One governor.
3. One chaplain.
4. One surgeon or apothecary.
5. One storekeeper.
6. One task-master.
7. One gaoler.
8. "Such under-keepers, and other officers as the committee shall judge necessary."

Section XXIII. respects the salary of the governors: it directs that this salary shall be so ordered by the committee as to "bear a constant proportion to the quantity of labour performed in each house;" and arise chiefly, or, if possible, totally from that source: and this to the end that "it may become the *interest* as well as the *duty* of each governor to see that all persons under his custody be regularly and profitably employed."

Observations. — The principle here laid down as the ground of the above provision is an excellent lesson to legislators, and is of more use in that view, than, from its seeming obviousness when announced, it might at first appear to be. It is owing to the neglect of it, that we hear such frequent complaints of the inexecution of the laws — a misfortune ordinarily charged to the account of individuals, but which ought in fact to be charged upon the laws themselves. The direction here given is a happy application of that principle. It is by strokes like these that genius and penetration distinguish themselves from shallowness and empiricism. The means that are employed to connect the obvious interest of him whose conduct is in question, with his duty, are what every law has to depend on for its execution. A legislator, who knows his business, never thinks it finished while any feasible expedient remains untried, that can contribute to strengthen this connexion. The Utopian speculator unwarrantably presumes, that a man's conduct (on which side soever his interest lie) *will* quadrate with his duty, or vainly regrets that it will *not* so.

The object in view in it, we see, is partly *economical* and partly *moral:* that such a profit be drawn from the labour of the convicts as may altogether, or at least in part, compensate the expense of the establishment; and that the morals of the convicts may be improved by a habit of steady and well-directed industry. The means by which it aims at the attainment of this object, are the giving to the person who has the government of the convicts, an interest in causing the labour to be thus applied. This, as far as it goes, is excellent, but perhaps there are means by which the power applied to produce labour might receive a still further increase. This power can operate no farther than as it comes home to the persons whose labour is in question. These persons are the convicts. Giving the governor an emolument in proportion to the labour they exert, it is expected, will cause them to exert more labour than they would otherwise: why? because the governor will employ such means as *he* has in his hands to induce them to exert it. These means must be either *punishment* or *reward*, these being the only certain inducements by which one man can influence the conduct of another. Of these two inducements, punishment is the most obvious, and at first view, the least costly to him who is to apply them. Taken singly, however, it is not always the most efficacious, nor in the end the most economical. The quantity of work done will depend upon the ability of the workmen; the quantity of work which a task-master can exact by dint of punishment, will depend upon the *apparent* ability of the workmen. Now, if the *apparent* ability of the workmen were always equal to the *real*, punishment alone might be sufficient to extract from him all the labour he can exert. But this is not the case: a man can always suppress, without possibility of detection, a great part of the ability he *actually* possesses, and stifle in embryo all the further stock of ability he *might* have possessed in future. To extract, therefore, all the labour that can be got from him, it is necessary to apply reward in aid of punishment; and not only to punish him for falling short of the *apparent* measure of his ability, but to reward him for exceeding it. Thus it is, that the course which recommends itself to *sentiment*, as the most humane, approves itself to *reason* as the most useful.

It seems, therefore, as if it might be an useful supplement to the above provision, if the convicts themselves were to be allowed some profit, in proportion to the produce of

and perhaps convicted, may he, or may he not then afterwards be *dismissed?*

As to the *quantum* of punishment allowed to be inflicted upon indictment, this may, perhaps, be liable, though in a much inferior degree, to the objection against a correspondent provision stated in section 18.

With respect to the jurisdiction within which the indictment is to be preferred, may there not be some danger in confining it to the sessions of the peace for the very place within which the house is situated? Suppose the delinquent to be a governor, and the house to be situated in a small town, such as Warwick or Wells:* the house at Warwick is calculated for 118 convicts; that at Wells for 126. The contracts for the maintenance of the house are all to be made by the governor: might not this privilege give him a considerable degree of influence among the grand jurymen for such small places as those towns? There are no separate sessions, indeed, for Wells or Warwick; so that the grand jurymen at the sessions there, would come out of the body of the county: but it might very well happen, on any given occasion, that the grand juries for the respective counties might, the greater part of them, come out of those towns; and the towns of Lincoln, Norwich, Durham, York, Gloucester, Worcester, Exeter, and Chester, all of them places wherein the committees are to meet, and within which, therefore, labour-houses are likely enough to be situated, have all separate sessions of their own. The houses, indeed, are directed not to be "*within* any town, if any other convenient place can be found;" that is, not encompassed with buildings; but this may not everywhere hinder their being within the jurisdiction; nor is the direction peremptory; and they are recommended to be *near* a town, to wit, a town of trade. The danger, certainly, is not very great; but it may be obviated without difficulty. All that is necessary is, to empower the committee, if they think fit, to prefer the indictment in any adjoining county at large; or in London or Middlesex, if the district be in the home circuit.

Section XXX. declares for what offences, and for what terms, convicts may be committed to these houses. These are

For petty larceny,		any term not exceeding two years.
For offences punishable by transportation,	for 7 years,	any term not exceeding 5 years, nor less than 1 year,
	for 14 years,	any term not exceeding 7 years.

Offenders are to be sent to the houses as soon as the committee certifies to the *judges*, as before,† that the house is ready to receive them.

Section XXXI. empowers the several courts, in the meantime, until the labour-houses are made ready, to commit offenders to the *county bridewells*, enjoining the justices in sessions to fit up those places for the "temporary reception, safe custody, employment, and due regulation of the offenders" that are to be sent there: and it declares that for such time the places in question shall be deemed labour-houses, for all the purposes within the meaning of this act.

Section XXXII. is confined to *male* convicts. It empowers courts to commit offenders of the male sex to work upon the Thames, or upon any other river that may be fixed upon for that purpose by an order of council. These are to work under the direction of a superintendent: to be appointed, for the Thames, by the justices of Middlesex; for any other river, by the justices of such adjoining counties as shall be fixed upon by the privy council.

The terms for which they may be committed are	not to be less than	1 year,	nor to exceed	7 years.

The provisions of this section are in the preambular part of it declared to be designed "for the more severe and effectual punishment of *atrocious* and daring offenders."

Observations. — The confinement and labour upon the Thames is looked upon, it appears from this, as being severer than the confinement and labour is at present in the county bridewells, or is expected to be in the labour-houses in question. It is not expressly referred to the option of the courts, which of these two species of hard labour or confinement they will order a man to: but as, by separate clauses, they are empowered to order a convict of the description in question to each, and not peremptorily enjoined to order him to either; it follows of necessity, that it was meant they should have that option. The preambular words above quoted being too loose to operate in the way of *command*, can be intended only for *direction*.

With regard to the superintendent under whose management the Thames convicts are to be, it speaks of him as one who is *to be* appointed by the Middlesex justices. Now, the present act, under which the present superintendent *has* been appointed, is, by the last section of the bill, to be repealed. This being the case, it looks as if a fresh appoint-

* See Table, col. 3.

† See Sections 11, 21, 26.

the district, for the amount of the above expenses.

5. Also for the other expenses of the house, under the following heads, viz.

1. Salaries.
2. Wages.
3. Coroner's fees.
4. Funeral charges.
5. Repairs.
6. Other necessaries in general.

6. It empowers him to draw for the first quarter in advance: such draught being allowed by the committee, and countersigned by their clerk.

7. Lastly. Whatever monies he receives as above, it enjoins him to apply to the purposes for which they are issued.

Observations. — It could hardly have escaped the notice of the author, to what a degree the power of making these contracts lies open to abuse; and yet, upon the face of the clause now before us, this power is committed solely to the governor, without any express reference to the committee for their concurrence. The danger, however, is not altogether unprovided against. They have a general power of displacing him; and the dependence seems to have been upon their availing themselves of that power to exercise an occasional negative upon these contracts, or to make such general regulations as they should deem requisite to obviate the abuse.

Section XXVI. proportions the sum to be drawn for upon each county, &c. within the district, to the average number of the convicts, as declared in section 8.* Disputes concerning the proportions, it refers to the judges, as before,† whose determination it makes final.

Section XXVII. prescribes the accounts that are to be kept by the governor, storekeeper, and task-master.

1. The governor is directed to enter into a book "all accounts touching the maintenance of the house, and the convicts therein."

2. The governor and storekeeper are each to keep separate accounts of all the stock brought into the house.

3. The storekeeper is to deliver out the stock to the task-master, and take receipts from him.

4. The task-master is to deliver out the work to the convicts.

5. The task-master is to keep accounts of the quantities daily worked by them respectively.

6. He is to return the materials, when wrought, to the storekeeper, taking his receipt for them.

7. He is to dispose of the wrought materials, with the privity of the governor, to whom he is to pay the produce; for which the governor is declared to be accountable to the committee.

8. The governor and storekeeper are to keep separate accounts of the materials wrought and disposed of, under the following heads: —

1. Species and quantity of the materials in question.
2. For what sold.
3. When sold.
4. To whom sold.

Section XXVIII. directs the manner in which the above accounts shall be audited by the committee: —

1. They are to examine the entries, to compare them with the vouchers, to verify them by the oaths of the governor and storekeeper, and upon that to allow or disallow them.

2. An account, if allowed, is to be signed by two or more members of the committee.

3. If the balance should be in favour of the governor, they are to pay him by draughts in the manner above set forth:‡ if against him, they may either leave it in his hands, or order it to be paid over as they think proper.

Section XXIX. empowers the committee, in case of their suspecting fraud, to examine upon oath any persons whatsoever respecting the above accounts; and in case of any false entry, or fraudulent omission, or other fraud, or any collusion of an officer or servant with any other officer or servant, or with any other person, to dismiss the officer or servant, and appoint another: or, if they think fit, to indict the offender at the next sessions of the peace for the place wherein the house is situated: and it limits the punishment to a fine not exceeding ten pounds, or imprisonment not exceeding six months, or both; saving the right of action to any party injured.

Observations. — With respect to the punishment of officers, this section, when compared with section 24, seems not altogether free from ambiguity. After empowering the committee to dismiss officers for misbehaving in any of the manners specified, it goes on and subjoins, in the disjunctive, another mode of punishment: they may be dismissed, it says, "*or*" indicted. It looks, from hence, as if it were not the intention of the author, that an offender of the description in question should be punished by dismission and indictment both; yet this he might be, notwithstanding, under the general power of dismission at pleasure, given by section 24; unless this section be understood *pro tanto* to repeal the other.

It may be said, by way of reconciling the two sections, that the sense is, that the offender may, if thought proper, be dismissed, or he may be indicted; but that if he has been dismissed, he is not to be indicted. But suppose him to have been *indicted first*,

* See Table, col. 5. † See Sect. 11, 21.

‡ See Sect. XXV.

Of the less laborious class, it instances:—

1. Making ropes.
2. Weaving sacks.
3. Spinning yarn.
4. Knitting nets.

Of these and other such employments, it leaves it to the committees to choose such as they shall deem most conducive to the profit, and consistent with the convenience, of the district.

Section XXXVIII. regulates the lodgment of the offenders.

1. The males are at all times to be kept "separate from the females; without the least communication on any pretence whatsoever."

2. Each offender is in all cases to have a separate room to sleep in.

3. Each offender, as far as the nature of his employment will admit, is to work apart from every other.

4. Where the nature of the employment requires two persons to work together, the room they work in is directed to be of "suitable dimensions."

5. Such two persons shall not continue together but during the hours of work.

6. Nor shall the same two persons work together for more than three days successively.

7. If the nature of the work requires "many" to be employed together, "a common work-room or shed" may be allotted them.

8. But in this case the governor, or somebody under him, "shall be constantly present to attend to their behaviour."

9. If the work require instruction, instructors shall be provided, who shall be paid by the committee.

It likewise gives some directions concerning the dimensions and structure of the lodging-rooms.

1. They are not to *exceed* in { length / breadth / height } { twelve feet. / eight ditto. / eleven ditto. }

2. They are to have no window within six feet of the floor.

Observations.—Nothing can be better contrived than this little string of regulations. They appear to be such as cannot but be conducive in the highest degree to the two great purposes of safe custody and reformation. They involve, it is true, a very considerable degree of expense; but perhaps there is no case in which there is more to be said in behalf of a liberal supply.

With regard, indeed, to the first of the above restraints, this, it must be confessed, is of itself, in some cases, a pretty severe, and, upon the whole, rather an unequal punishment. The amorous appetite is in some persons, particularly in the male sex, so strong as to be apt, if not gratified, to produce a serious bad effect upon the health; in others it is kept under without difficulty. On the score of punishment, therefore, this hardship, could it be avoided, would, on account of its inequality, be ineligible. Under a religion which, like the Mahometan or Gentoo, makes no account of the virtue of continence, means perhaps might be found, not inconsistent with the peace of the society, by which these hardships might be removed. But the Christian religion, at least according to the notions entertained of it in Protestant countries, requires the temporal governor to put an absolute negative upon any expedients of this sort. Since, then, the gratification of this desire is unavoidably forbidden, the best thing that can be done is to seclude the parties as much as possible from the view of every object that can have a tendency to foment it. On this account, the first of these regulations is as strongly recommended by humanity as a means of preserving the quiet of each individual convict, as it is by policy as a means of preserving the peace of the whole community of them at large. Happily, the dispositions of nature in this behalf second, in a considerable degree, the dispositions of the legislator. Hard labour, when not compensated by nourishing and copious diet, has a strong tendency to diminish the force of these desires, whether by diverting the attention, or by diminishing the irritability of the nervous system, or by weakening the habit of body: and the desire, when the habit of gratifying it is broken off, subsides, and becomes no longer troublesome.

With regard to the size of the rooms, this we see has limits set to it on the side of augmentation; on the side of diminution, it has none. This partial limitation, I must confess, I do not very well perceive the reason of. Errors, if at all, seem more to be apprehended on the side of diminution than on that of augmentation. That the rooms should not be less than of a certain size, is conducive to health. The danger seems to be, lest the committees should, out of economy, be disposed to put up with narrower dimensions. If the sums provided by the bill out of the national fund are not sufficient, the deficiency, we may remember, is to be provided for by the counties.

Section XXXIX. prescribes the *times* of work.

1. The days of work are, unless in case of ill health, to be all days in the year: except

1. All Sundays.
2. Christmas-day.
3. Good-Friday.

2. The hours of work, as many as daylight and the season of the year will permit, including two intervals; *to wit*,

1. For breakfast . . . . Half an hour.
2. For dinner . . . . . One hour.

ment of the same or some other person to be superintendent would be necessary, unless some slight alteration were made in the wording of this clause.

Section XXXIII. extends the provisions respecting convicts sentenced to transportation, to capital convicts pardoned on that condition: and it allows and enjoins any one judge, before whom the offender was tried, upon a written notification of his Majesty's mercy, given by a secretary of state, to allow the offender the benefit of a conditional pardon, as if it were under the great seal.

Section XXXIV. proscribes the method in which an offender is to be conveyed from the place of sentence to the place of punishment, together with the documents by which the right of conveying him thither, and keeping him there, is to be established.

Upon the making of any order for the commitment of an offender to hard-labour, a certificate is to be given by the clerk of the court to the sheriff or gaoler who has him in custody.

In this certificate are to be specified,

1. The Christian name of the offender.
2. His surname.
3. His age.
4. His offence.
5. The court in which he was convicted.
6. The term for which he is ordered to hard-labour.

Immediately after the receiving such certificate, the gaoler is to cause the offender to be conveyed to the place of punishment, and to be delivered, together with the certificate, as the case is, to the governor or superintendent, or "such person or persons as such governor or superintendent shall appoint:" and the person who receives him is to give a receipt in writing, under his hand: which receipt is declared to be a sufficient discharge to the person who delivers him. This certificate, "the governor or superintendent, or other person or persons to whom such offender shall be so delivered," is required "carefully to preserve."

Observations.—With respect to the words, "such person or persons as such governor or superintendent shall appoint," I doubt some little difficulty may arise. Does the passage mean any person in general acting under the governor or superintendent? any person employed by them as a servant in the discharge of the duties of their office? or does it mean, that some one particular person or persons should be appointed by them for this particular purpose; so that a delivery made to any other person in their service should not be good? On the one hand, it is not every person who may be occasionally employed in the service, whom it would be safe to trust with such a charge; on the other hand, it might be attended with a good deal of inconvenience, if upon any occasion the governor or superintendent, and any one person respectively appointed by them for this purpose, should by any accident be both absent, or disabled by illness. A remedy for both inconveniences may be the directing the governor to give standing authorities for this purpose in writing, to such a number of his servants, as may obviate any danger there might be of their being all out of the way at the same time. In such case, there could be no inconvenience in making it necessary to the discharge of him who is to deliver the prisoner, that he who is to receive him shall have produced and shown him such authority.

Section XXXV. provides for the fees and expenses of conveyance. The clerk of the court, on granting the certificate, and the sheriff or gaoler, on delivering the offender, are to have the same fees as would respectively have been due to them, had he been "sentenced to" transportation.

The expense of those fees, and the other expenses of conveyance, are to be borne by the jurisdiction over which the court presides; and are to be paid by the clerk of the court, upon an order made by the general sessions of the peace for the jurisdiction.

Section XXXVI. appoints, in general terms, the powers a governor or superintendent, or persons acting under them, are to have, and the punishments they are to be liable to in case of misbehaviour: those powers and these punishments it declares to be the same as are incident to the office of a sheriff or gaoler.

Section XXXVII. gives directions respecting the species of work in which the convicts are to be employed. For this purpose it marks out two classes of employments, correspondent to so many different degrees of bodily strength. Those whose strength is in the first degree, whether of the one sex or the other, it destines to labour of the "hardest and most servile kind:" those whose strength is in a lower degree, to "less laborious employments:" and in determining whether an offender shall be deemed to come under one of these classes or another, it directs that the three circumstances of *health*, *age*, and *sex*, be all taken into consideration.

Of each of these classes of employment it gives examples. Of the hardest and most servile kind it proposes,

1. Treading in a wheel.
2. Drawing in a capstern for turning a mill, or other machine or engine.
3. Beating hemp.
4. Rasping logwood.
5. Chopping rags.
6. Sawing timber.
7. Working at forges.
8. Smelting.

chain, not heavy enough to incommode them by its weight, might answer the purpose. Each offender would by this means be a clog and a spy upon his companion. In this view, the idea adopted in section 38, with regard to the manner of working, might be pursued, so as that the same two persons should not be coupled together two successive days; nor should it be known before-hand, what two persons are to be together. To prevent this, the names should be drawn out every day by lot. By this means, supposing an offender had succeeded so far in a project of escape or mischief, as to engage some one of his comrades to join with him, he could not, for a long time afterwards, unless by a very extraordinary turn of chance, resume the conversation without the privity of two others, whose dispositions could not be known before-hand. If the expedient of a garden were to be employed, such an arrangement would have a farther good effect, in rendering it more difficult for them to wander out of bounds, and do mischief to the cultivated part of it.

The interruptions of bad weather, and the shortness of the day, at any other time than the height of summer, would still leave a considerable part of their time which could not be filled up in this manner; either, therefore, they must be permitted to employ themselves in some other manner, or they must be compelled to absolute inaction. They cannot, as other persons of the working class do, employ themselves on those days in visiting their friends.

They may employ themselves, it is true, in reading the Bible or other books of piety: but there will be a great many who cannot read; and of those who can, many will have so little inclination, that on pretence of reading, they will do nothing.

It is to little purpose to issue directions, which, in the nature of them, furnish no evidence of their having been complied with. The not attending to this, is a common stumbling-block to superficial reformers. The evidence of a man's having complied with a direction to work, is the work he has done: this may be judged of at a glance. But what is the evidence of a man's having employed himself in reading? His giving a good account of what he has read. Unquestionably: but such an one as it would be to little purpose to think of exacting, for, though his attention has been diligent, his memory may be weak. Besides, who is to judge? who could find time enough to catechise such a multitude? It would require no small number of schoolmasters to turn such an establishment into a school.

Upon the whole, I can see no better expedient at present, than that of permitting them (not *obliging* them, but *permitting* them) to betake themselves to some easy sedentary employment, such as knitting, spinning, or weaving, that might afford them a small profit. This profit, if made their own, would make the employment pleasant to them. Devotion, it is true, is better on such a day than industry; but industry is better on every day than total idleness, that is, than despondency or mischief. The necessity in this case seems at least as strong as that which has induced the legislature to permit the practice of certain trades on the day in question, and which is universally understood to authorize persons of all descriptions to pursue most of their household occupations. It were hard if an institution, confessedly no original part of the religion we profess, but only adopted into it by early practice, and in later times sanctioned by human authority, must, at all events, be permitted to oppose the main ends of religion, innocence and peace.

I speak all along under correction, and what I propose is only upon the supposition that no other means can be found of filling up their time in a manner more suitable to the day.

With regard to the making the windows not less than six feet above the floor, this regulation is also recommended by Mr. Howard. His design in it, I cannot find he has anywhere mentioned; I suppose it to be to prevent the convicts from looking out. The prospects or moving scenes, whatever they might be, which the windows, if lower, might open to their view, might serve to distract their attention from their work. This privation may be considered in the light of an independent punishment, as well as in that of a means of insuring their subjection to the other.

Besides this, Mr. Howard is strenuous against glass windows: he would have nothing but open grating. In this case, the height of the windows would be a means, in some measure, of sheltering the inhabitants from the wind, though, on the other hand, it would expose them more to rain. I know not, however, that he has been anywhere explicit in giving his reasons for reprobating these conveniences.

One reason may be the insuring a continual supply of fresh air; but this does not seem conclusive. In apartments, indeed, so crowded and ill-contrived as many of those he had occasion to visit, the windows, being glazed, might, by accident, be attended with bad effects; for I think he complains, in many places, of the closeness of such rooms, owing, as it seems, either to the windows not being made to open, or to the inattention or ignorance of the gaoler or prisoners in not opening them. But under the excellent regulations provided for these houses, the apartments never will be crowded; they will not be crowded more than those of a private house;

3. At the close of the day, when working-time is over, such of the materials and implements as admit of removal, are to be removed from the work-rooms to places proper for their safe custody, there to be kept till it come round again.

Observations. — With respect to the hours of work, the duration of daylight, if taken for the sole measure, (as one would suppose it to be by this passage in the bill) would, I doubt, be found rather an inconvenient one. In the depth of winter, the time of working can scarcely begin so early as eight in the morning, nor continue so late as four in the afternoon. In the height of summer, it may begin earlier than three in the morning, and it may continue later than nine in the evening; but if from eight till four, that is, eight hours, be enough, from three to nine, that is, sixteen hours, were even nothing more than the *duration* of the labour to be considered, is surely too much. But labour of the same duration and intensity is severer in summer than in winter, heat rendering a man the less able to endure it. The better way, therefore, seems to be, if not to make the time of working longer in winter than in summer, at least to make it of an equal length. As eight hours, or the least time of daylight, therefore, is evidently too short a time, this will make it necessary to have recourse to lamps or candles. As the walls and floors will of course be of brick or stone, without any combustible linings, these artificial lights can scarcely be attended with any danger.

Whatever be the hours of labour fixed upon as most proper for an average, there are some among the employments above mentioned,* that will probably be found too laborious for a man to be confined to during the whole time. In such a case, either he must remain without any thing to do, or employed in some kind of work so much less laborious as to serve as a kind of relaxation from the other. The latter course seems beyond comparison the best. On this account, it seems as if it would be of advantage that no person should be confined exclusively to the most laborious of the classes of employments above specified; but that such offenders as were destined principally to an employment of that class should, for some part of the day, be turned over to one of the sedentary kind. On the other hand, neither would it be so well, perhaps, that offenders of the least robust class should be confined wholly to employments purely sedentary. The relief of the former and the health of the latter would, it should seem, be best provided for by a mixture of the laborious and the sedentary. By this means, the time of the convicts might, it should seem, be better filled up, and the total quantity of their labour rendered more productive

The great difficulty is, how to fill up their time on Sundays: for, with regard to men in general, more particularly to persons of this stamp, the danger always is, that if their time be not filled up, and their attention engaged, either by work or by innocent amusement, they will betake themselves either to mischief or to despondency. Divine service, it is true, is appointed to be performed, and that twice-a-day; but that, according to the ordinary duration of it, will not fill up above four hours; that is, about a quarter of the day.

To fill up the remainder, four expedients present themselves: — 1. One is to protract the time of rest for that day, which may be done either by letting them lie longer, or sending them to bed earlier.

Another is, to protract the time of meals.

A third is, to protract the time of divine service.

A fourth is, to furnish them with some other kind of employment.

The two first are commonly enough practised by the working class of people at large who are at liberty; but when put both together, they will not go any great way.

The time of attendance at church might be lengthened in two ways: 1. By adding to the ordinary service a standing discourse or discourses, particularly adapted to the circumstances of the congregation. This might consist, 1*st*, of prayers; 2*dly*, of thanksgivings, neither of which, however, could with propriety be very long; and 3*dly*, of a discourse composed of moral instructions and exhortations. The instructions and exhortations would naturally have two objects: the conduct of the hearers, 1*st*, during the continuance of their punishment: 2*dly*, after their restoration to society

2. Another way of adding to the church service is by *music*. This will, at any rate, be a very agreeable employment to many, and, if properly managed, may be a very useful one to all; even to those who have no natural relish for music in itself. The influence which church music has over the generality of men, in bringing them to a composed and serious turn of mind, is well known. The music might be either vocal only, or assisted by an organ. In either case, the vocal part might, with a little instruction, be performed by the congregation themselves, as it is at the Magdalen, and other public foundations.

3. As to other employments, walking (in as far as their limits will permit them) might go some way towards filling up their time. This would be an additional use for the garden proposed in the observations to section 13. On this occasion, to prevent insurrections and cabals, the convicts might be connected two and two together; a slight

* See Sect. XXXVII.

any fresh application, as long as the *stratum* of skin which it pervades; that is, to the best of my recollection, about a week. No other washes have ever yet been found to discharge it.

Marks of this kind, we see, cannot be put off like those of the former; nor, if made as extensive as they may be, can they be concealed without such a covering as would be almost equally characteristic with the mark itself. When the term of punishment was so near being expired, that it could manifestly not be worth while to run the risk of an escape, they might be disused. For greater security, they might be so shaped, perhaps, as to express the surname of the offender, the first letter of his christian name, and the name of the place in which the labour-house he belonged to was situated.

One great advantage of these permanent marks with respect to the offender, is, that they would render the use of *chains* less necessary. The convicts upon the Thames, in consequence of repeated escapes, are made to work constantly in fetters.

By Section XLI. officers and servants belonging to the house are specially restrained from contravening the regulations established in the preceding section. Upon any such delinquency the offender is to be suspended by the governor forthwith: the governor is to report him to the visitors, and the visitors to the committee at their next meeting. The committee is to inquire upon oath, and, if found guilty, to punish him by

1. Forfeiture of his place;
2. Or fine, not more than ten pounds;
3. Or imprisonment, for not more than six months.
4. Or any number of such punishments in conjunction.

An exception is made with regard to any diet or liquors ordered, in case of illness, by the surgeon or apothecary.

Observations. — The fine in this and the preceding section is not liable to the objection made to the like provision in section 29. The profit of the offence can never, in any shape, come nearly equal to the greatest *quantum* of the fine. Let the offences in the two cases be compared, it will be seen how much greater the temptation is in the latter than in the former.

The regulations in this and the preceding section, about not punishing the convicts with any extra articles of consumption, might need to be a little altered, if what I have ventured to propose concerning the allowing them a part of their earnings* were to be adopted. These earnings must either be hoarded up for them, to be given them at their discharge, or allowed them to be spent. In the first case, the danger is, lest an advantage so distant should not, in their imprudent minds, have influence enough to operate as an inducement. "I may be dead before then," a man may say, "and what use will all the money be of to me? besides, if I am alive, how can I be sure that I shall get it? What need have I, then, to punish myself with working more than I am obliged to do?" I should not, therefore, expect any very general or considerable good effect from such an allowance, without the liberty of spending it, or at least a part of it, at present. The business, then, would be, to determine the articles in which they might be allowed to spend it. Even drink, so it be not any of those drinks that are known commonly by the name of spirituous liquors, need not be absolutely excluded: but, for very good reasons, which are strongly insisted on by Mr. Howard,† no profit upon the drink should be allowed to the governor, or any persons under him: or else (what would come nearly to the same thing) if there were a profit allowed upon that article, it should not be greater, nor indeed so great, as the profit to be allowed upon the other articles among which they were to be permitted to take their choice. The smallness of their fund would probably of itself be sufficient to limit their consumption within the bounds of sobriety. If not, the quantity of drink of each sort, which any one man should be allowed to purchase, might be expressly limited. The circumstances of their being so much apart from one another, and so much under the eye of their inspectors, would obviate the difficulty there would be otherwise in carrying such a limitation into effect.

Section XLII. makes provision for the equipment of the offender upon his discharge. Upon his commitment, the clothes he brings with him are to be cleaned, ticketed, and laid up. Upon his discharge, they are to be delivered back to him, together with such additional clothing as the visitors shall think proper. A sum of money is also to be allowed him for his immediate subsistence, to the amount of not more than five pounds, nor less than forty shillings. And if he has behaved himself well during his confinement, the visitors are to give him a certificate to that effect under their hands.

Observations. — There is something singularly characteristic in the foresight and humanity displayed in this provision. It is copied from the experimental act of 1776. After a long seclusion, the convict is once more turned adrift into society. His former con-

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and solution of mercury in the same acid, a black. Solution of silver is the operative ingredient in several of the fluids that are advertised to dye the hair.

* See Observations to Sect. XXIII.

† P. 49.

and in a private house it never surely was understood to be necessary, or even of use to health, that there should be nothing but grates for windows. If the convicts were to eat in a common room, the setting open the doors and windows for an hour and a-half, which is the time allotted them for meals,) would be quite sufficient for the purpose of ventilation.

Another reason for having nothing but grating may be the contributing to give a gloomy and distressful appearance to the outside of the prison. This reason, as far as it applies, seems to be a very good one. But it applies only to the front of the house; for this is all that need, or indeed that ought, to be exposed to the eyes of passengers. The apartments thus exposed might be destined for those whose labour was the hardest, and whose treatment, upon the whole, was designed to be the severest; or the whole or a great part might be taken up with common working-rooms, not made use of for lodging-rooms.

Section XL. regulates the articles of diet and apparel. For food the convicts are to have

1. Bread, and any coarse meat, "or other inferior food."

2. For drink, water or small beer.

3. The apparel is to be coarse and uniform, with certain obvious marks or badges on it. The declared purposes of these marks are, 1*st*, to humiliate the wearer; 2*dly*, to prevent escapes.

4. The articles under the above heads are to be ordered in such a manner as the "committee shall from time to time appoint."

5. No offender is to be permitted to have any other food, "drink, or clothing, than such as shall be so appointed."

Persons wilfully furnishing him with any articles of the above kind, other than what shall have been so appointed, are to forfeit not more than £10, nor less than 40s.

Observations.—The expedient of marking the apparel is well imagined, and quadrates with the practice of several foreign countries.* It is designed, we see, to answer two purposes: 1*st*, that of a separate punishment, by holding up the wearer in an ignominious light; 2*dly*, that of safe custody, to ensure the continuance of the whole punishment together. The first of these purposes it may be made to answer as completely as any other that can be proposed: with respect to the latter, it will readily be acknowledged not to be perfectly efficacious.

Marks employed for this purpose, may be either *temporary* or *perpetual*. Against perpetual marks, in every case, then, except where the confinement is meant to be perpetual, there is this conclusive objection, that they protract a great part of the punishment beyond the time that was meant to be prescribed to it. Temporary marks may either be *extraneous* or *inherent*. The marks here proposed are evidently of the former kind. These, so long as they continue, are very efficacious means of detection, and may be made more palpable than any that are inherent. They serve very well, therefore, as obstacles to an escape during the first moments; in short, until such time as the fugitive can by force or favour procure fresh apparel. But if he is once housed among his friends or confederates, the use of them is at an end. If his person be not known, he may go about boldly like another man.

Inherent marks seem never hitherto to have been thought of. These may be produced by either *mechanical* means or *chemical*.

Instances of *mechanical* means are the partial shaving of the head, or of the beard, or the chin, or mouth; or the shaving of one eye-brow. But the mark made by the partial shaving of a part of the face, of which the whole is usually kept shaved, is as soon got rid of as any mark that is but extraneous: besides that, it is inapplicable to boys and women. The mark made by the shaving of one eye-brow seems to promise better; but it is not free from all objections. In the first place, it is not absolutely a sure one. Some persons have naturally so little hair on their eye-brows, that, if the whole of it were taken off from both, it might not be missed; and artificial eye-brows are said to have been made of mouse-skin, or in other ways, and that so natural, as not to be detected without previous suspicion. In the next place, there is some danger that a mark continually renewed, as this must be, by repeated shavings, would be in some degree perpetual. If the same eye-brow were to be constantly subjected to the operation, the hair might be so thickened as to appear different from the other eye-brow. If sometimes one eye-brow and sometimes the other were to be shaved, there must frequently be times when the growth of them will be alike, and the distinction no longer apparent. As far, then, as it goes, the best expedient seems to be the keeping them constantly both shaved.

Instances of *chemical* means of producing marks are washes applied to the forehead, or to one or both cheeks, or, in short, to the whole face, so as to discolour it. Chemistry furnishes many washes of this sort. Of several of these I have often undesignedly made trial upon myself. Various metallic solutions produce this effect in a state so diluted as prevents any objection on the score of expense.† The stain lasts without

* See Howard on Prisons.

† Solution of gold in *aqua regia*, produces a purplish colour; solution of silver in *aqua fortis*,

with dust and dirt. It will also give access for the air to ventilate the under part of it.

Bedsteads are actually allowed to felons in many gaols.*

I see no provision made here for *firing:* yet some provision of this sort seems absolutely necessary, at least in extreme cold weather, for those whose employments are chiefly of the sedentary kind, and for all of them at times, when no work is done, as on Sundays. For this purpose, it is by no means necessary, nor even advisable, that there should be a fire to every room, nor between every two rooms, nor indeed that there should be in any of the rooms any fireplaces at all. The most economical way as yet in use, of generating and applying heat for this purpose, seems to be that which is practised in *hot-houses*, by means of flues or lateral chimnies, in which the smoke deposits its heat in its passage to the atmosphere. The fire employed in heating the bread-oven might, perhaps, be occasionally made useful in this way. I have heard it suggested, that the steam of boiling water might perhaps be applied to the purpose of heating rooms, in a method that might be more economical than that of heating them by smoke. If this expedient were employed, the coppers in which the victuals were boiled might perhaps be adapted to this purpose.†

The provision for excluding promiscuous visitants seems highly eligible. In a nation, however, so jealous of every thing that savours of secresy in the exercise of coercive power, even over the most obnoxious of its members, it required no mean degree of intrepidity to propose it. I had, in truth, but little hope of seeing it proposed, much less adopted and acquiesced in, as it already is in the instance of the Thames convicts. An acquiescence so complete and general as this has been found to be, argues a greater fund of solid sense, and less sensibility to inflammatory ideas, than perhaps, before the experiment was made, could reasonably have been hoped for. This, together with many other examples to the like effect, may serve to silence at least, if not to remove, any objections that may be entertained against a measure acknowledged to be beneficial in itself, on the score of its being obnoxious to popular sentiment, unwarranted by the dictates of utility.

The establishment of Visitors, who are frequently to be changed, and the admission of occasional visitants by order from any member of the committees, are expedients that seem amply sufficient for obviating any real danger of abusive severity. It is surely a notion too wild to be seriously entertained, by any one who will give himself leisure to reflect, that the whole body of country magistrates, and the whole circle of their acquaintance, are likely to be tainted with the principles of aristocratic tyranny. Supposing this, against all probability, to be the case, and that any one habit of undue severity were established, any one false brother would be sufficient to betray the secrets of the confederacy, and expose it to the resentment of the public.

At the same time, it is highly expedient to give as little admittance as possible to persons of such ranks in life as are most obnoxious to the punishment inflicted in these houses. The cirumstances of secresy and seclusion give an air of mystery to the scene, which contributes greatly to enhance the terrors it is intended to impress. True it is, that the convicts, as they come to be discharged, and to mix again with society, will circulate, among persons of the same ranks in life, such accounts of what they have seen and felt, as it may be thought will be sufficient to correct any inaccuracies in the notions that may have been suggested by imagination. This, however, I take it, will not be altogether the case. Experience and ocular observation might indeed, in time, dissipate the illusion, and bring down the apparent horrors of the scene to a level with the real suffering; but in the susceptible minds of the giddy multitude, it is not mere report alone that can obliterate the influence of first impressions.

Section XLV. makes provision for communicating to these societies the benefits of religion.

1. On all Sundays, as also on Christmas-day and Good-Friday, there is to be morning and evening service, with a sermon after each; at which services all the convicts (unless disabled by illness) are to be present.

2. The two sexes are to be kept at a distance from, and, by means of partitions, out of sight of, one another.

3. Of the officers and servants, such as can be spared from their employments, are likewise (unless prevented by illness) to be present.

4. The chaplain is required to visit, at their request, and empowered to visit at his own discretion, any of the offenders, sick or in health, who may stand in need of his spiritual assistance: so that his visits interfere not with their stated labours.

Observations.—It were to be wished on this occasion, if it could be done without inconvenience, that such of the convicts as may happen to be of a religion different from the established, might have the benefit of spiritual consolation in their own way. It is no answer, to say with a sneer, that the inhabitants of these houses are in little likelihood of being encumbered with religious scruples;

* Howard, 96, 264, 292, 404, 407, 443, 454.

† Mr. Howard found stoves, and a regular provision for firing, in several foreign prisons. See Howard, 109, 114, 137.

nexions are by this time, perhaps, dissolved; by death, by change of abode, or by estrangement: at any rate, he is probably at a distance from them. His known delinquency and his punishment, though, after such a course of discipline, it is to be hoped it will not operate upon *all* persons so as to prevent their employing him, may, however, operate upon *many*. Meantime, if he be totally unprovided, he must either sink at once into the idleness and misery of a poor-house, or beg, or starve, or betake himself to courses similar to those which brought him to the place of punishment he is just freed from. The expedient, therefore, of giving him a temporary supply, is an highly proper one, though not so obvious as, for the credit of human sagacity and compassion, it were to be wished it were.

But supposing an offender's behaviour to have been such as renders it improper for the visitors to give him the certificate here mentioned, what is to become of him then? Were no certificate to be given in any case, some persons might, perhaps, be induced to run the hazard of employing a convict, to whom it would not have been proper to have granted one. But when it is known that a certificate of good behaviour is granted to the generality of the convicts, the denial of such a certificate to any one amounts in fact to a certificate of the contrary. In such a case, it is not very probable that he will find employment anywhere. The supply provided for him, liberal as it is, can *reprieve* him only, not *save* him, from the above-mentioned dilemma.

In such a case, I see but two courses that can be taken. One is, to empower the committee to continue him in his confinement, till his behaviour shall have entitled him to his certificate: the other is, to enlist him by compulsion in the land or sea service. How far it would be consistent with the honour of either of those services to admit a man with such a stamp of uncancelled ignominy upon him, is more than I can take upon me to determine. At any rate, it seems hardly proper to let him rank upon a par with honest men. In the sea service, provisions being found him, his pay might very well bear to be reduced below the common level: in the land service, provisions not being allowed, the subsistence is too bare to admit of the least reduction.

It is to be hoped, indeed, that after so strict and well-regulated a course of discipline as that prescribed by the bill, there will be very few convicts to whom it will be necessary to deny the certificate in question; but it is fit that every case that can happen should be provided for.

Section XLIII. provides that the offenders shall be divided into three classes; in each of which every offender is to be ranked, during an equal part of his time: and as he advances from a prior to a subsequent one, his confinement and labour are to be gradually less and less severe. The different gradations of severity are to be settled from time to time by regulations to be made by the committee, so as not to clash with the provisions of this bill.

Observations.—This division of the convicts into classes will be examined, when we come to consider the uses that are made of it.

Section XLIV. regulates the furniture and police of the lodging-rooms.

1. Every lodging-room is to be "provided with matting for lying upon, a coverlid, and two or more coarse blankets."

2. "Also with proper tools or instruments for their employment."

3. No person (except as herein is excepted) is to "be permitted to go at any time into these rooms, or to see or converse with the offenders."

4. Persons excepted are, 1. The officers and servants of the house; 2. Any person who has an order from any member of the committee.

5. At night, as soon as the time of work is over, a bell is to be rung, the doors of the rooms locked, and the lights in them put out; and from that time, till the hour of work comes round again, a watchman is to patrole over every part of the house every half-hour at least.

Observations.—Under the article of bedding, I see no mention made of *sheets*. Was this omission undesigned, or was it meant that they should have none? or would not the use of linen, if not absolutely necessary, at least be conducive, however, to the preservation of their health? Mr. Hume, I think, in his History, Mr. Barrington,* and, I believe, medical writers, have mentioned the use of linen as being a principal cause why the leprosy, which was once so common in this country, is now so rare.

I see no mention neither of a *bedstead*. Mr. Howard in general terms recommends bedsteads for health and cleanliness.† A bedstead, however cold the materials (suppose iron,) will be warmer than the stone or brick floor, with only matting to cover it; for the surface of the iron in the bedstead being much less than that of the covered part of the floor, the natural warmth of the body, accumulated on the bedding, will be conducted away much less readily by the former than by the latter. At any rate, the elevation given by a bedstead will save the bedding from being trampled on, and covered

* Observations on the Statutes, Title *Consuetudines et Assisa Forestæ*, p. 193, 3d edit.

† P. 71, 264.

be but a few steps. It is doubtless for these or similar reasons, that a situation thus elevated is very generally chosen for the infirmary in foreign prisons.* In order that those whose health might require it, might enjoy the benefits of air and exercise in some degree, even in rainy weather, it would be of great use if the building, or a great part of it, were raised upon arcades. This Mr. Howard recommends strongly for so much of it as is occupied by lodging-rooms, on the score of security.

The expense, indeed, of building upon arches, and of leading, would be very considerable; but the plan seems to be, not to spare expense. The Conciergerie at Paris,† the Dol-huys at Amsterdam,‡ the Maison de Force at Ghent,|| are raised upon arcades:§ in the Bastile at Paris, the roof is flat and leaded. I must confess, I see not why England should be less able to bear such an expense than France, Holland, or Austrian Flanders.

Section XLVII. regulates the appointment, powers, and salaries of the visitors.

1. Each committee is to appoint two visitors, "Justices of the Peace, or other substantial householders," who are to be resident in the district.

2. Of these visitors, one is to be changed every year: no one is to continue for more than two successive years; but any one, after an interval of two years, may be again appointed.

3. The visitors are to attend at least once in every fortnight.

4. At each attendance they are to go through the following heads of duty:

1. To examine the state of the "house" [buildings.]
2. To see every convict.
3. To inspect the accounts of the governor and storekeepers.
4. To hear any complaints concerning the behaviour of the officers and servants.
5. Or of the convicts.
6. And in general to examine into the conduct and management of the house.

5. For these purposes, every visitor is empowered to examine any persons upon oath.

6. They are likewise empowered to apply punishments or rewards as under-mentioned.

7. They are from time to time to make their reports to the judges,¶ as before, or to the committee of the district.

8. They are to have a gratuity, if they think proper to demand it, for each attendance, to be settled by the committee, and approved of by the judges.

Observations. — The rotation established among these officers is grounded upon approved principles, that are exemplified in many other instances. If the same two visitors were to be continued for life, the degree of discipline kept up in the house might come to depend more upon the notions and temper of those two persons, than upon settled rules. Having no emulation to animate them, they might grow torpid and indifferent: they might contract too close an intimacy with the governor and other officers, so as to be disposed to connive at their negligence or peculation: they might make what is called a *job* of their office, looking upon the emoluments of it as an establishment for life. On the other hand, were both visitors to go out at once, the fresh comers would for a time be new and awkward in their office; and the fund of experience collected at each period would be dissipated by every fresh appointment. But upon this plan, that fund is continually accumulating, and is transmitted entire through every succession. At the same time, by admitting the re-election of a visitor after a certain interval, room is left for accepting the services of such gentlemen as, in point of inclination and ability, may show themselves most competent to the office.

Section XLVIII. gives power to the visitors to suspend any officer or servant, except the governor, in case of "corruption, or other gross misbehaviour."

Section XLIX. appoints the duty of the task-master.

1. He is constantly to superintend the works carried on by the convicts.

2. He is to "take an account of every neglect of work or other misbehaviour."

3. Also of any instance of extraordinary diligence or good behaviour.

4. He is to make his reports from time to time to the governor, who is to cause them to be entered in a book to be kept for that purpose.

Section L. defines the powers of the governor in punishing offences committed in the house. These are enumerated under the following heads: —

1. Disobedience of the "orders of the house."
2. Idleness, negligence, or wilful mismanagement of work.
3. Assaults, not attended with any dangerous wound or bruise, by one convict upon another.
4. Indecent behaviour.
5. Profane cursing and swearing.
6. Absence from chapel.
7. Irreverent behaviour at chapel.

2. For any of the above offences, the governor may punish by close confinement in a "cell or dungeon," for any term not exceeding three days, and keeping the offender upon bread and water only.

* Howard, 82, 91, 96.
† Ibid. 82.
‡ Ibid. 128.
|| Ibid. 140.
§ Ibid. 82.
¶ See Sections 11, 21, 24, 26, 30.

for a total indifference to religion is by no means a necessary accompaniment to an occasional deviation from the dictates of morality; on the contrary, it is no uncommon thing to observe, in the same person, a great inattention to the essentials of morality, joined to an anxious attention to the inessentials and externals of religion. This point, however, could not be compassed without some difficulty. It would be endless to set up as many chapels as there may chance to be sects in this community. At any rate, it is not the belonging or professing to belong to any other sect, that should be allowed to excuse a man from attending the stated service; for, if this were the case, persons who cared nothing about religion would be apt to profess themselves of some dissenting sect, that, instead of going to chapel, they might spend the time in idleness. The being obliged to give such attendance would be no hardship to any, even in a religious view; for I do not believe there is at this time of day any sect which holds it sinful merely to be present at divine service performed according to the rites of the church of England.* I suppose there are few, indeed, but would even think it better to attend that service than none at all.

Jews and Catholics would be the worst off: Jews, with their continual domestic ceremonies, and Catholics with their numerous sacraments. Catholics† seem, at first sight, to be without hope of remedy: a door, however, though but a narrow one, is opened for their relief, by the general power vested in the members of the committees to give orders of admission. As to Jews, I must confess, I can see no feasible way of making, in each labour-house, the provisions requisite for satisfying all their various scruples. As it happens, there seems reason (I do not know whether to say to hope, but at any rate) to believe, that of such of them as are likely to become inhabitants of these houses, there are not many on whom these scruples would sit heavy. The only expedient I can think of for the indulgence of these people is, to have one labour-house for all the convicts of this persuasion throughout the kingdom. In such case, it would be but reasonable that the whole community of Jews should be at the expense of this establishment, including the charges of conveyance. They might then have their own *rabbis*, and their own cooks and butchers.

The provision for the concealment of the sexes from each other has been exemplified by the practice in the Magdalen and other chapels.

In some of the larger houses, considering the number of persons, either sick or in health, who might be disposed to receive the assistance of a minister, or to whom a zealous minister might be disposed to give it, especially if these additions were to be made to the service that are proposed under section 39, a single chaplain might hardly be sufficient to go through all the duty. In such case, the contributions that might be required of occasional visitors at chapel, who are likely to become numerous, might probably provide for another chaplain.

Section 58, which relates to convicts working upon rivers, provides for the burial of such as die under confinement. I see no such provision relative to such as may die in the labour-houses. Would it not be proper to annex to each house a piece of ground to be consecrated for that purpose?

Section XLVI. makes provision for the article of health.

1. There are to be two or more yards, in which the offenders are to be permitted to take the air by turns, as their health may require: in these yards, if proper employment can be found, they are also to be permitted to work, instead of working in the house.

2. Any offender appearing to be sick, is, upon report made by the surgeon or apothecary that his sickness is real, to be ordered by the governor to the infirmary, if his sickness be of a nature to require it, and entered in a book upon the sick list: and upon the surgeon or apothecary's report of his being recovered and fit to work, he is to be brought back to his lodging-room, and put to work again, as far as is consistent with his health.

Observations. — The number of yards is required, we see, to be two at least: the intention is manifest enough, though it is not mentioned: it is, that the two sexes may, in conformity to the plan of separation marked out in sections 38 and 41, have each a yard to themselves.

As to the purpose of airing, the best place of all is the top of the house. The air on the top of the house is likely to be purer than the air in any yards can be, surrounded as such yards must be by a high wall: 1*st*, such a situation would be higher than the damp or the noxious effluvia would ascend, were the air to remain unchanged: 2*dly*, besides this, the air, on account of the openness of the situation, would, in fact, be continually renewing.‡ For this purpose, it would be necessary the roof of the house should be flat, and covered with lead. The infirmary might be situated in the highest story, so that from thence to the leads would

* In the prisons at Paris, however, Protestants are excused from hearing mass. See Howard, 81.

† By Stat. 27 Eliz. c. 2, for a popish priest or other ecclesiastical person to be in any part of the realm is treason; and for any one wittingly and willingly to receive, relieve, or comfort him, is a capital felony.

‡ Howard, 82, 91.

quent classes (in the same manner, perhaps, but) for a *longer* time than he was to have had to go through them in under his original commitment. Had there, however, been no distinction in the treatment to be given to the respective classes, it must have been understood in this sense, as prolonging the total time; for the provision would have had nothing but the circumstance of time to operate upon.

Another doubt I have respecting the clause in section 50, which limits the time for which a governor is empowered to keep a convict in a dungeon upon bread and water to *three* days. This passage I know not very well how to reconcile to a clause in section 51. In this latter section, in case of an offence which, in the opinion of the governor, deserves a greater punishment than what he is himself authorized to inflict, he is directed to report it to the visitors, who, in such case, are authorized to order the offender to confinement in a dungeon, there to be kept on bread and water, if that be the mode of punishment they think proper to adopt, for ten days. Thus far, then, their power extends; to the confining a man for ten days. To the governor, in the last preceding section, it was not thought proper to give so great a power: his power was to extend no farther than to the confining a man for three days; yet in this same section, in the case above mentioned, where, by the supposition, he cannot punish by confinement for more than *three* days, the governor is empowered and "required" to order the convict to the dungeon, and "immediately, or the next time the visitors shall come," report the offence to them, for them to punish it. Now, for what time the convict committed in this manner to a dungeon is to remain there, is not expressly said: as no time is mentioned for his releasement, it seems impossible to put any other construction upon the clause than that he is to stay there till the coming of the visitors. But the visitors may not come for a fortnight.* So long, then, may a convict remain in one of these dungeons by the authority of a governor. The consequence is, that indirectly a power is given to this officer, of inflicting a punishment more than three times as great as that which it is thought proper, in direct terms, to empower him to inflict; and (as far as concerns this species of punishment) greater than that which it has been thought proper, in any terms, to empower the visitors to inflict. On this occasion, no mention, I observe, is made of dieting upon bread and water: the governor is simply required to order the offender to one of the dungeons. Is he then, or is he not, in this case, authorized to add that hardship to the confinement? Is the dieting in this manner, or is it not, to be regarded as an article included of course in the regimen of a dungeon? This power of punishing an offender previously to trial, is confined, I observe, to the governor: it is not given to the visitors.

* See Sect. 47.

The provision for disposing of the convicts into classes,† so as to be liable to be advanced or to be degraded,‡ seems an excellent expedient for strengthening the influence of the several authorities to which it is meant to subject them. It seems extremely well contrived for exciting emulation; for making a standing and palpable distinction betwixt good and ill behaviour, and for keeping their hopes and fears continually awake. If it should be thought proper to indulge the convicts with a share in the profit of the labour,‖ this would afford a farther means of adding to the distinction.

Here ends that part of the bill which concerns the establishment of labour-houses. What follows in the seven next sections is confined to the system of labour to be carried on upon rivers. The greater part of them are employed in re-enacting so many corresponding clauses of the present act.§ Concerning these, it will not be necessary to be very particular.

Section LIII. establishes, in general terms, the authority of the superintendents above spoken of.¶ It empowers them, upon the delivery of any *male* convict into their custody, to keep him, for the term mentioned in his sentence, to hard labour. This hard labour is to be applied "either to the raising of sand, soil, and gravel, or in any other laborious service for the benefit of the navigation of the Thames, or of such other navigable rivers or harbours as aforesaid;"** when on the Thames, "then at such places only, and subject to such limitations, as the Trinity-House shall from time to time prescribe."

Observations.— This, as to the greater part of it, is an exact transcript of the latter part of section 5 of the present act.††

Section LIV. prohibits superintendents from employing their convicts in delivering ballast to ships: it restricts the application of the labour to the above-mentioned object of benefiting the navigation of the rivers or harbours in question; except that it permits the employing them in making or repairing embankments or sea-walls.

† See Sect. 43. ‡ See Sect 51.

‖ See observations on Sect. 23.

§ The name given to the head person who is to have the charge of the convicts upon this establishment, is changed from *Overseer* (the word used in the former act) to *Superintendent.*

¶ See Sect. 32, 33, 34, 36.

** See Sect. 32.

†† By *the present act*, I mean all along the Stat. 16 Geo. III. ch. 43, being that which is in force at the time I write.

3. Touching any of the above offences, the governor may examine "*any*" persons upon oath.

Section LI. empowers the visitors and the committee to punish certain other instances of bad behaviour in a severer manner.

1. To the visitors power is given to punish, in any convict, the following additional offences: —

1. Absolute refusal to perform his work.
2. Wilful abuse of the materials.
3. Attempts to escape.
4. Assaults on any person at large, who happens to be present.
5. Assaults on any officer or servant of the house.

2. They are empowered also to punish any assaults by one convict upon another, that may happen not to have been punished by the governor.

3. Also any of the offences which the governor is authorized to punish in the case where, by reason of the enormity or repetition of the offence, the punishment which the governor is empowered to inflict of his own authority, is thought by him not to be sufficient.

4. For any of the above offences, the visitors may punish by either

1. Moderate whipping.
2. Confinement upon bread and water in a dungeon, for any time not exceeding ten days.
3. Or both the above punishments in conjunction.

5. Concerning the above offences they are empowered to examine upon oath, with an injunction that it be in the presence of the offender.

6. In the cases No. 2 and 3, "*the governor may, and he is hereby required to, order such offender to the cells or dungeons,— and is immediately,*" *or at the next coming of the visitors, to* "*report such offence to such visitors; who are hereby empowered and required to inquire and determine concerning the same.*"

7. In case of any offence which the visitors shall deem worthy of a greater punishment than they are authorized to inflict, they shall report the offence, with the nature and circumstances of it, and the name of the offender, to the next meeting of the committee.

8. To the committee power is given to punish offences thus reported to them, by either

1. Moderate whipping.
2. Confinement upon bread and water in a dungeon.
3. Turning down from a higher class to a lower.
4. All or any of the above punishments in conjunction.

9. "*In case of removal into a prior class, the offender shall, from the time of making such order of removal, go through such prior class, and also the subsequent class or classes, in the same manner, and for the same time, as under his or her original commitment.*"

Section LII. is the converse of the section last preceding: it opens a door to pardon, upon the ground of extraordinary *good* behaviour.

1. If in any convict committed by justices in sessions, the visitors "shall at any time observe, or be satisfactorily informed of, any extraordinary diligence or merit," and make report accordingly, "the said justices" [shall] "may, if they think proper, advance him into a higher class."

2. When any convict has been promoted as above, the time of his confinement is to "be computed as if he or she had regularly passed through the prior class or classes."

3. With regard to any convicts committed by the judges,* whether originally, or upon a pardon granted upon that condition, for a certain term, the judges are, upon a like report, to have like power to alter and shorten his confinement.

4. Convicts, committed for life, may, upon being reported to the judges as aforesaid, be by them reported to his Majesty for mercy.

Observations.—This and the two last preceding sections bearing a close relation to one another, I shall consider them together. As to the last of the two paragraphs I have printed in italics, I must confess I am not altogether certain about the sense of it. My doubt is, whether a convict, upon his degradation into a lower class, is to be punished with respect to the severity of his treatment only, or, besides that, with respect to the duration of his confinement. I am inclined to imagine, both ways; but this construction seems not to be absolutely a necessary one.

A convict, suppose, has been committed for three years. He has served the first year of his time, and half his second. Of course, he has been half a year entered in the second class. He now commits an offence which the committee think proper to punish with degradation: he is turned down into the first class. What now is to become of him? Is he to stay two years and a half longer, to wit, one half year more in the first class, and a year in each of the other classes, or only one year and a half, that is, half a year in each of the three classes? In the first case, it seems hardly proper to say, that he has gone through "such prior class, and also the subsequent classes, in the same manner and for the *same time* as under his original commitment;" for it seems that he has gone through such prior class, and also the subse-

* At the Old Bailey, or on the circuits.

pense to the establishment. Not content with performing the ordinary duty in the manner provided for in the bill, he is assiduous in giving them the benefit of his instructions by every means, and at every opportunity in his power. He has distributed Bibles among them; and has endeavoured to direct their attention to the sacred writings, by giving them rewards for performing little exercises proposed to them as tests of their proficiency.

The loose and general way in which these and other exigencies are provided for, with respect to convicts of the description now before us, especially when compared with the strict and minute attention paid to the regimen of the labour-houses, are strong testimonies of the extraordinary confidence reposed in the present superintendent. I have never heard of any fact so much as surmised, that afforded the least reason for deeming that confidence misplaced, and I have much reason for entertaining a contrary opinion; yet I should be sorry to see the merit of this individual officer made an argument for entailing powers so unlimited upon what person soever may chance at any time hereafter to bear his office. The establishment upon the Thames has been acknowledged to be intended but as a measure of experiment; it is to be hoped, therefore, that when the effect of the regimen prescribed for the hard-labour houses has been approved by experience, it will be extended to the establishments upon rivers. *Jealousy, not confidence, is the characteristic of wise laws.*

Section LX. enjoins the governors and superintendents to make returns of the state of the convicts under their care. These returns are to contain the following particulars:—

1. The name of each convict committed to their custody.
2. His offence.
3. His sentence.
4. His state of body.
5. His behaviour while in custody.

They are also to exhibit the names of all such convicts, as, since the last return, have passed out of their custody, whether

1. By death.
2. By escape.
3. By releasement, whether by order of a Secretary of State or otherwise.

For the purpose of making these returns, regular *books* are to be kept by the persons who are respectively to make them.

They are to be made by the superintendent of the Thames convicts to the King's Bench, the first day of every term; by the governors of labour-houses, and the superintendents of any other work, to the judges, as before,* at each assize; to the justices of the peace for every county and division within the district, at the two sessions holden next after Easter and Michaelmas.

They are to be made upon oath, to be administered to them by the respective courts.

Observations.—The ordering these returns is a measure of excellent use in furnishing *data* for the legislator to go to work upon. They will form altogether a kind of *political barometer*, by which the effect of every legislative operation relative to the subject, may be indicated and made palpable. It is not till lately that legislators have thought of providing themselves with these necessary documents. They may be compared to the bills of mortality published annually in London; indicating the moral health of the community (but a little more accurately, it is to be hoped,) as these latter do the physical.

It would tend still farther to forward the good purposes of this measure, if the returns, as soon as filed, were to be made public, by being printed in the Gazette, and in the local newspapers. They might also be collected once a-year, and published all together in a book.†

Section LXI. provides a penalty for escapes. This penalty, if the convict had been ordered to hard labour in lieu of capital punishment, is death: if in lieu of transportation, in the first instance, an addition of three years to his term of servitude; in the second instance, death.

Observations.—I cannot help entertaining some doubts of the expediency of capital punishment in case of escapes. *Punishments that a man has occasion to choose out of, should be commensurable.* That which is meant to appear the greater, should either be altogether of the same kind, or include one that is of the same kind with the lesser; otherwise, the danger always is, considering the variety of men's circumstances and tempers, lest the punishment which appears the greater to the legislator and the judge, as being in general the greater, should appear the lesser to the delinquent. On the other hand, you may be sure of making your punishment appear the greater to the delinquent, when, keeping to the same species, you can either increase it in degree, or add a punishment of another species. A fine may to one man be worse

* See Sections 11, 21, 24, 26, 30. 47, 52.

† A few years ago, I began sketching out a plan for a collection of documents of this kind, to be published by authority, under the name of *bills of delinquency*, with analogy to the *bills of mortality* above spoken of: but the despair of seeing anything of that sort carried into execution, soon occasioned me to abandon it. My idea was to extend it to all persons convicted on criminal prosecutions. Indeed, if the result of all law proceedings in general were digested into tables, it might furnish useful matter for a variety of political speculations.

Observations. — This section is an exact transcript of section 6 of the present act, with the addition only of the above exception. As this new kind of employment was meant to be permitted, the insertion of the above exception for that purpose, was no more than prudent, at least, if not absolutely necessary: for the main design in making of embankments or sea-walls is to save the land from being carried away or overflowed; and it may be of little or no service to the navigation. Mr. Campbell, superintendent of the Thames convicts, pursuing the spirit of his instructions rather than the letter, has already ventured to employ his convicts in some useful works on shore: perhaps it might not be amiss to add a retrospective clause for his indemnity.

As to the prohibition above mentioned, no reason for it is given. I imagine the reason to have been the preventing that intercommunication which, in such a case, would have been necessary between the convicts and the ships' crews. It can have nothing to do with any privileges of the Trinity-house; not being confined to the Thames, but extended to all rivers and harbours where convicts shall be employed.

Section LV. provides for the diet and apparel of convicts, under the care of superintendents, as section 40 did for those who are to be confined in the labour-houses. In point of diet, it directs that they be fed with bread, and any coarse or inferior food, and water or small beer, as in section 40; only the word "*meat*" is dropped here after the word coarse (whether by accident or design is more than I can determine.) The apparel it leaves altogether to the "discretion of the superintendents:" it likewise prohibits the supplying the convicts with any other food, drink, or clothing, under a penalty of not more than ten pounds, nor less than forty shillings.

Observations. — This section is the same as section 7 of the present act; except with regard to the penalty, which, by the present act, is not to be more than forty shillings.

Section LVI. invests superintendents with the power of correction. A convict refusing to perform his work, or "*guilty of any other misbehaviour or disorderly conduct,*" may be punished by the superintendent, by "such whipping, or other moderate punishment, as may be inflicted by law on persons committed to a house of correction for hard labour."

Observations. — This section is the same in every respect as section 8 of the present act.

Section LVII. provides a supply for convicts of this description, upon their discharge, to the same amount as section 52 did for the convicts in the labour-houses. It likewise provides for the discharge of any convict, previous to the expiration of his term, upon a letter written, upon a recommendation from the judges as in section 60, by a secretary of state. The sum of money, and the clothing, it refers, in this case, to the determination of the above judges.*

Observations. — This section is the same, in every respect, as section 9 of the present act.

Section LVIII. makes provision in the lump for the assistance, medical and religious, to be given to the convicts in question, as likewise for the burial of such as may chance to die, as also for these and all other expenses attending the keeping of the convicts under the care of such superintendents. These expenses it directs to be annually laid before the House of Commons, and undertakes, that, after deducting the net profits (if any) of the labour, they shall be provided for in the next supplies granted by parliament. The chaplains, surgeons, and apothecaries to be provided, are to be such as "the superintendent shall find it expedient, or shall be required" (it does not say by whom) "from time to time to employ." The convicts are to be "*buried* in the most commodious parts of the shores, in or near which they have been employed," and "according to the form prescribed by the liturgy of the Church of England. The necessary charges of such funerals, and also of the coroners, who shall sit on the bodies of such convicts, are to be defrayed in the manner above mentioned."

Section LIX. provides, that such chaplains shall read morning and evening *prayer*, and preach a *sermon* after each, every Sunday, as also on Christmas-day and Good Friday.

Observations.—These two sections are so many additions to the present act. In this the whole business was referred so entirely to the discretion of the superintendent, that no express provision was made for either the spiritual or medical assistance, or the burial of the convicts. Neither was any provision made for the coroner's fees; whereby that expense (which was not altogether a trifling one) falls solely as yet upon the counties bordering that part of the Thames they are employed upon; that is, upon the counties of Kent and Essex, one or both of them. These omissions are supplied in the bill before, as it was highly requisite they should be.

In the meantime, they have been voluntarily supplied by the attention of Mr. Campbell, the present superintendent. A surgeon of a battalion attends the convicts once a-day; and the surgeon-general of the artillery visits them once a-week. A clergyman, sent by the Countess of Huntingdon, gives them the assistances belonging to his profession, without any gratuity from Mr. Campbell, or any ex-

* See Sections 11, 21, 24, 26, 30, 47, 52.

or attempt to escape or rescue, either against the convict himself, or any person assisting him, the certificate above mentioned (after proof made that the culprit is the same that was delivered with such certificate) is to be deemed conclusive evidence of his being the person who was ordered to the confinement therein mentioned.

Observations. — To show the beneficial effects of these provisions, in saving useless trouble, the way would be to state and explain the several rules of law which they dispense with; but this is a piece of information that would not be very interesting to readers at large, and lawyers have no need of it.

Section LXIV. appoints the mode of procedure for the recovery of the pecuniary penalties inflicted by this bill, when no particular method is prescribed.* It is to be summary, before two justices of the peace: the imprisonment, in case of failure, is to be for not less than one month, nor more than six. The other provisions are what are usually inserted in cases of summary procedure.

Section LXV. is another provision of procedure, dispensing, for the purposes of this act, with the general rule of law, that judges must be *in* the jurisdiction *for* which they are doing business. It sometimes happens, that the court-house for a town that is a county of itself, is the court-house for the county at large, but the judges' lodgings are not situate in both. It therefore declares, that, for the above purposes, they shall be "construed and taken to be situate in *both.*"

Observations. — Here the hand of the lawyer is visible: a plain man would have contented himself with saying, that a judge of the description in question might do such business as might be done at his lodgings, for any county, although he were in an adjacent one. But there never was yet a lawyer, who, when either would equally well serve the turn, did not prefer a false account to the true one. The old maxim, which, to another man would seem inflexible, "nothing can be in two places at once," bows down before him. These paradoxes are a kind of professional wit, which is altogether innocent in the intention, though not altogether harmless in its effects. This is no reflection on the author: it is only attributing to him, in common with every body, what nobody is ashamed of.

Section LXVI. allows persons prosecuted for anything done in pursuance of this bill, to plead the *general issue:* if the suit terminate in their favour, gives them treble costs; if against them, and by verdict, exempts them from costs, unless the judge certify his approbation of the verdict.

* See Sections 40, 55. See also Sections 18, 41, 62, where other modes of procedure seem to be intended.

Section LXVII. limits the place and time of such a prosecution. The jurisdiction is to be that wherein the act was done; the time, within six months of it.

Section LXVIII. and last, repeals the present act, except with regard to such offenders whose terms are unexpired.

Observations. — Perhaps the simpler, and more commodious way, would be to take a section by itself, for giving the requisite continuance to the above terms, and doing what else is necessary (for I suspect that more may be necessary) to prevent the unintended consequences of such a repeal; and then, in another section, to repeal the act simply and absolutely.

Some hundred years hence, when conciseness shall be deemed preferable to prolixity, and the parliamentary style shall have been divested of all those peculiarities which distinguish it, to its disadvantage, from that of common conversation, the formulary for that purpose may be as follows: —

The Act 16 *George III. c.* 43. *stands repealed.*

The Act 16 George III. may be repealed, but the memory of the proposer of it will survive.

SUPPLEMENTAL HINTS AND OBSERVATIONS.

The following observations, though they connect with the subject of Section 1, could not well have been introduced previously to Sections 30, 43, and 52.

Besides those stated under Section 1, a farther advantage which the punishment proposed to be established in the labour-houses has over transportation, is that of superior *divisibility;* by which means the quantity of it is capable of being proportioned with greater nicety, to the different degrees of malignity in different offences. The punishment of hard labour is divisible in point of *intensity* as well as of *duration;* and a division of it in the former of these ways is actually directed to be made in section 43. That of transportation is divisible no otherwise than in point of duration. In this point it is, in its own nature, indeed, incapable of being divided to as great a degree of nicety as hard labour is. Very little advantage, however, of this property of it, has been made in practice. I am not certain whether there may not have been a few instances in which convicts have been transported for as short a time as three years; but in general, the only terms in use have been for seven years, for fourteen years, and for life. In the duration of the confinement in the hard-labour houses, as many different periods are allowed on one occasion or an-

than imprisonment; imprisonment may to another man be worse than a fine: but a fine of twenty pounds must to every man be worse than a fine of ten pounds; imprisonment for six months, than imprisonment for three: so also must imprisonment, though it were but for a day, added to a fine of ten pounds, than a fine of ten pounds by itself.

In the present instance, it may very well happen, that a convict may even prefer certain death to his situation in a labour-house or on board a lighter: in such case, the punishment of death, it is plain, can have no hold on him. What is still more likely to happen is, that although he would not prefer *certain* death to such a situation, he would yet prefer such a *chance* of death as he appears likely to be liable to, after having effected his escape. I say, after *having* effected it: for the *attempt*, I observe, is not made punishable in this manner.

It may be objected in the first case, that if death were preferable in his eyes to servitude, he would inflict it on himself. But the inference is not just. He may be restrained by the dread of future punishment; or by that timidity which, though it might suffer him to put himself in the way of dying at a somewhat distant and uncertain period by the hand of another, would not suffer him, when the time came, to employ his own. In either of these cases, capital punishment, so far from acting as a preventative, may operate as an inducement.

In cases of escape, little, it should seem, is to be done in the way of restraint, by means that apply only to the mind: physical obstacles are the only ones to be depended on. To the catalogue of these, large additions and improvements have been made, and still more, as I have ventured to suggest, might be made, if necessary, by the present bill. The degree of security which these promise to afford, seems to be quite sufficient, without having recourse to capital punishment. This will save the unpopularity of inflicting a punishment so harsh, for an offence so natural.

In preference to capital punishment, I would rather be for applying hard labour for life. Such a punishment is already admitted of by this bill.*

Section LXII. inflicts penalties on such persons as may be instrumental to escapes.

1. Any persons rescuing such a convict, either from the place of his confinement, or from the custody of any who are conveying him to it, or assisting in such rescue, are to suffer as for rescuing a felon, after judgment, from a gaoler.

2. Any persons who, by supplying arms, or instruments of disguise, or otherwise, assist a convict in escaping, or attempting to escape, are to suffer as for felony.

3. Persons who, having the custody of such a convict, or being employed by one that has, permit him to escape, if *voluntarily*, are also to suffer as for felony.

4. If *negligently*, are to be deemed guilty of a misdemeanor, and are to be liable to a fine not exceeding ten pounds, or to imprisonment for not more than six months, or to both.

Observations.— The punishment here appointed for negligently permitting an escape, is, I fear, liable to be too small; especially considering, that a wilful permission of this sort may frequently, for want of direct proof, be no otherwise punishable than as an act of negligence. If a convict of this stamp be a man of substance, as may sometimes happen, he may be very well able to give an under-keeper such a reward for his connivance as may very well indemnify him against the chance of losing ten pounds, and suffering even a six months' imprisonment. What is remarkable, this punishment is no greater than that which, in another part of this bill,† is appointed for the trivial offence of supplying a convict with prohibited meat or drink. Instead, therefore, of saying that it should not be *more* than the *quantum* specified, I would rather say that it should not be *less*. At any rate, it should contain some imprisonment; for, against imprisonment, a man cannot be so completely indemnified as against fine.

I see no punishment for the *attempt* to rescue, or the assisting in such attempt: yet the attempt to rescue is an offence as much more atrocious than the assisting in a quiet attempt to escape, as robbery is than simple theft.

What is the use of describing the punishment of a rescuer in a round-about way by reference? why not make it felony at once? The standing punishment for the rescuing of a felon (meaning a simple felon) is no more than simple felony. It ought, however, to be greater, or else the assisting in a quiet attempt to escape ought to be less: *otherwise the offender has nothing to determine his choice in favour of an offence less mischievous, in preference to an offence more mischievous.*

I take for granted it could never have been the intention that, under this clause, the rescuer of a capital felon pardoned on condition, should suffer capitally.

Section LXIII. is calculated to facilitate the prosecution of persons concerned in escapes.

1. Convicts escaping may be *tried* in the county in which they are retaken.

2. In a prosecution for an escape or rescue,

* See Sect. 52.

† Sections 41, 55.

number of yards distance? An establishment of this sort might, in some way or other, afford inducements to people of the lower classes to settle near it. But the near vicinity of any house might be productive of several bad effects: it might facilitate escapes; it would take away from the sequestrated appearance of the scene; it would put the convicts and their neighbours into the way of engaging in conversations which might be of prejudice to both.

With regard to such convicts as it may be thought expedient to put to works of the sedentary kind, it might be of use, on the score of economy, if such of them as have a trade of their own that can be carried on in the house, should be permitted to work at that trade, in preference to another. Hatters, stocking-weavers, tailors, shoemakers, and many other handicrafts, might carry on their trades in such a situation, nearly as well as anywhere else; so it were in the wholesale way, and not for particular employers. The trades that will be set up in the house for the instruction of the convicts will hardly be of the most lucrative kind; and if they were, it can hardly be expected that a man should earn as much at a trade that is new to him, as at one he has been bred up to. The difference would be so much loss to the public during the time a convict continues in the labour-house. But it might, besides that, be a loss to him, and through him to the public, for the remainder of his life: if his confinement has been long, he may have lost, by the time it is over, a great part of his skill. In the compass of a few years, a course of hard labour may have irrecoverably deprived a man of that pliancy of muscle and nicety of touch that is necessary in some trades.

The convicts who come within the view of this institution may be distinguished into two classes: the one consisting of malefactors by profession, who possess no honest talent; the other of persons of different trades and employments, who have subjected themselves to the censure of the laws by an occasional deviation from integrity. The first cannot but be benefited by the institution in point of talent, as well as in other respects; the others, howsoever benefited in other respects, may, in many cases, be sufferers in point of talent, if their industry be forced out of its old channels

other, as may be marked out between one year and seven years. I cannot see, however, why even a greater latitude than this should not be admitted of, especially on the side of diminution; in other words, why a shorter time than a year should in no case be allowed. One should think, that for many of the offences that are punishable by transportation, a less term than one year, and for petty larceny, a less term than two years (the terms respectively allowed of,) might suffice. But on this head I shall insist no farther, as it would lead me from the particular object of the proposed bill, to discussions that belong to a general survey of criminal jurisprudence.

Another point in which the punishment proposed by the bill, has the advantage of transportation, is that of being in the way of being *remitted* at any time, on the ground of merits displayed subsequently to the offence. Provision, we may remember, is made for that purpose in section 52. But a convict who is transported, though he be not out of the *reach* of pardon, is out of all *hope* of pardon on that ground, since he lies out of the reach of all observation which could dictate the expediency of such indulgence.

The following hints connect, in some measure, with the subject of section 13, and with a principle adopted in section 40.

A suitable *motto* over the doors of these houses might have many good effects. It might contribute to inculcate the justice, to augment the terror, and to spread the notoriety of this plan of punishment.

The following sentence might, perhaps, answer the purpose:—"*Had they been industrious when free, they need not have drudged here like slaves.*"

Or this,—"*Violence and knavery*
Are the roads to slavery."

The latter is that which I should prefer, on many accounts. It is more expressive, indicating more particularly the kind of misbehaviour that was the cause of their punishment; and the proverbial turn of it, together with the jingle, will render it more apt to be circulated and remembered by the people. *Violence* respects those who may be committed upon a pardon for robbery, or those who may have been committed in any way for malicious mischief; *knavery*, the common run of thieves and sharpers. *Fraudulent* and *forcible*, is a division that runs in a manner through the whole catalogue of offences against the police.

The efficacy of this motto might be still farther assisted by a *device*. Over the door there might likewise be a bas-relief, or a painting, exhibiting a wolf and a fox yoked together to a heavy cart, and a driver whipping them: the wolf as an emblem of violence and mischief; the fox of knavery. In the back ground might be a troop of wolves ravaging a flock of sheep, and a fox watching a hen-roost.

Bas-reliefs, if made in artificial stone, might be cast, a number of them in the same mould, and be the same for all the labour-houses.

Should it be thought an improvement, a monkey, as being more peculiarly the emblem of wanton mischief, might be added to the above train. Among the offences which it is proposed should be punishable in this manner, are many that come under the denomination of malicious mischief. In this case, the inscription, instead of "*Violence and knavery*," had need to be, "*Mischief, rapine, knavery.*" The danger is, lest the addition of an animal, whose manners are calculated more constantly to excite merriment by their drollery, than displeasure by their mischievousness, should give such a cast of ridicule to the whole contrivance, as should counteract the design of it.

The device adopted in the house of correction at Mentz, and other foreign prisons, according to the account given of it by Mr. Howard,* does not seem so well imagined as it might be. It consists of a waggon drawn by two stags, two lions, and two wild boars; and the purport of the inscription is, that "if wild beasts can be tamed to the yoke, we should not despair of reclaiming irregular men." The equipage here represented, has nothing in it that is very characteristic of the persons whose conditions it is meant to allegorize; and there seems to be something awkward in making the hopes of succeeding, with regard to men, rest, as it were, upon no better footing than the success of the contrivance there imagined respecting brutes. I have read of hogs being now and then employed in some parts of France to help to draw a plough. We have read of gods and goddesses, and now and then, perhaps, a Roman general in his triumph, who have been drawn by lions; but I never heard yet of a stag's being yoked to a waggon, either as a truth, or in the way of fable; much less appearance is there of its being acknowledged for a known truth that waggons may be made to draw with a team composed of stags, and boars, and lions.

Let me not be accused of trifling: those who know mankind, know to what a degree the imagination of the multitude is liable to be influenced by circumstances as trivial as these.

With regard to the site of the building,† might it not be a proper direction to give, that care should be taken to have such a quantity of ground all around the building included in the purchase, as might prevent any houses from being built within such a

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* P. 108. † See Sect. 11.

TABLE referred to in SECTIONS 3, 5, 6, 9, & 11.

I.	II.		III.	IV.	V.	VI.	VII.	VIII.
No. of Districts.	Districts in each Circuit.		Place of Meeting in each District.	Counties in each District.	Justices for each County.	Convicts in a Year in each County.	Convicts to be provided for in each District.	Sums to be allotted to each County. (*i*)
XI.	OXFORD CIRCUIT.	1*st*.	Oxford . .	Berkshire	3	13	69	
				Oxfordshire . . .	3	10		
XII.		2*d*.	Gloucester	Gloucestershire .	2	22	123	
				Gloucester . . .	1	3		
				Herefordshire . .	2	8		
				Monmouthshire .	2	8		
XIII.		3*d*.	Worcester	Shropshire . . .	2	16	135	
				Staffordshire . .	2	15		
				Litchfield	1	1		
				Worcestershire .	2	10		
				Worcester	1	3		
XIV.	WESTERN CIRCUIT.	1*st*.	Exeter . .	Cornwall	3	12	105	
				Devonshire . . .	3	22		
				Exeter	1	1		
XV.		2*d*.	Salisbury .	Dorsetshire . . .	2	10	135	
				Poole	1	1		
				Hampshire	2	19		
				Southampton . .	1	1		
				Wiltshire	2	14		
XVI.		3*d*.	Wells . . .	Somersetshire . .	4	25		
				Bristol	2	17		
XVII.			London . . .	London	5	107	321	
XVIII.			London, &c.	Middlesex	5	296	888	
XIX.	WELSH DISTRICT. (*g*)		Chester . .	Cheshire	3	16	48	
				Welsh Counties at large (*h*)	12			
				Carmarthen (*l*) .	1			
Total of the Convicts for all the Districts . . .						955(*k*)	2865 (*k*)	

(*g*) The county of the city of Chester is, in § 3, p. 5 of the bill, among the jurisdictions included in the computation of the number of convicts for the Welsh district: it is also specified in § 5, p. 6, among the jurisdictions comprised within that district: but no committee-justices are allowed it by § 6. The county of the town of Haverford-west is, in § 3, p. 5, included in the computation of the average number of convicts for the Welsh district: but it is not specified in § 5, p. 6, among the jurisdictions comprised within that district; nor are any committee-justices allowed to it in § 6.

(*h*) Viz. for each, *one*.

(*i*) Blanks are left for these in the bill: a column is here allotted to them for the convenience of any one who may choose to fill up the blanks with a pen, when those in the bill are filled up.

(*k*) But see note (*d*).

(*l*) Carmarthen is among the jurisdictions included, &c. see note (*g*): but no committee-justices are allowed it.

TABLE referred to in SECTIONS 3, 5, 6, 9, & 11.

I.	II.		III.	IV.	V	VI.	VII.	VIII.
No. of Districts.	Districts in each Circuit.		Place of Meeting in each District.	Counties in each District.	Justices for each County.	Convicts in a Year in each County.	Convicts to be provided for in each District.	Sums to be allotted to each County. (*)
I.	HOME CIRCUIT.	1st.	Chelmsford	Essex	3	18	90	
				Hertfordshire	3	12		
II		2d.	Maidstone	Kent	3	26	99	
				Canterbury	1	1		
				Sussex	3	6		
III.		•3d.	Kingston	Surrey	5	42	126	
IV.	MIDLAND CIRCUIT.	1st.	Lincoln	Derbyshire	2	8	90	
				Lincolnshire	(a) 3	10		
				Lincoln	1	1		
				Nottinghamshire	2	6		
				Nottingham	1	3		
				Rutlandshire	1	2		
V.		2d.	Warwick	Leicestershire	2	4	108	
				Leicester	1	2		
				Northamptonshire	2	7		
				Warwickshire	2	18		
				Coventry	1	5		
VI.	NORFOLK CIRCUIT.	1st.	Bedford	Bedfordshire	2	7	75	
				Buckinghamshire	2	9		
				Cambridgeshire	2	4		
				Ely	1	2		
				Huntingdonshire	2	3		
VII.		2d.	Norwich	Norfolk	3	15	93	
				Norwich	1	2		
				Suffolk	3	14		
VIII.	NORTHERN CIRCUIT.	1st.	Durham	Cumberland	2	5	(e) 51	
				Durham	2	6		
				Northumberland	2	(c) 5		
				Berwick	(b)			
				Newcastle	1	(d)		
				Westmoreland	1	1		
IX.		2d.	Lancaster	Lancashire	5	26	78	
X.		3d.	York	Yorkshire	(f) 6	30	105	
				York	1	3		
				Kingston	1	2		

(a) Viz. for each of its *Parts*, one.
(b) The town of Berwick is specified in § 5, p. 7 of the bill, among the jurisdictions comprised within the northern circuit: but no committee-justices are allowed to it in § 6.
(c) The average number of convicts for Berwick is computed in the lump with the number for Northumberland.
(d) No number of convicts is stated for Newcastle in the bill: in the table annexed to the bill it is stated at *five*. This makes a difference of *fifteen* in the number to be provided for.
(e) The number in the table is 66. See note (d).
(f) Viz. for each Riding, *two*.

BUILDING AND FURNITURE

FOR AN

INDUSTRY-HOUSE ESTABLISHMENT,

FOR 2000 PERSONS, OF ALL AGES,

ON THE

PANOPTICON OR CENTRAL-INSPECTION PRINCIPLE.

☞ For the Explanation of the several Figures of this PLATE, see "Outline of a Work, entitled PAUPER MANAGEMENT IMPROVED;" Bentham's Works, vol. viii., p. 369 to p. 439.

The Ranges of Bed-Stages and Cribs are respectively supposed to run from End to End of the *radial* Walls, as exhibited in the GROUND PLAN: they are here represented as cut through by a Line parallel to the Side of the Polygon: in the Bed-Stages, what is represented as *one* in the Draught, is proposed to be in *two* in the Description.

FIG. I.—ELEVATION.

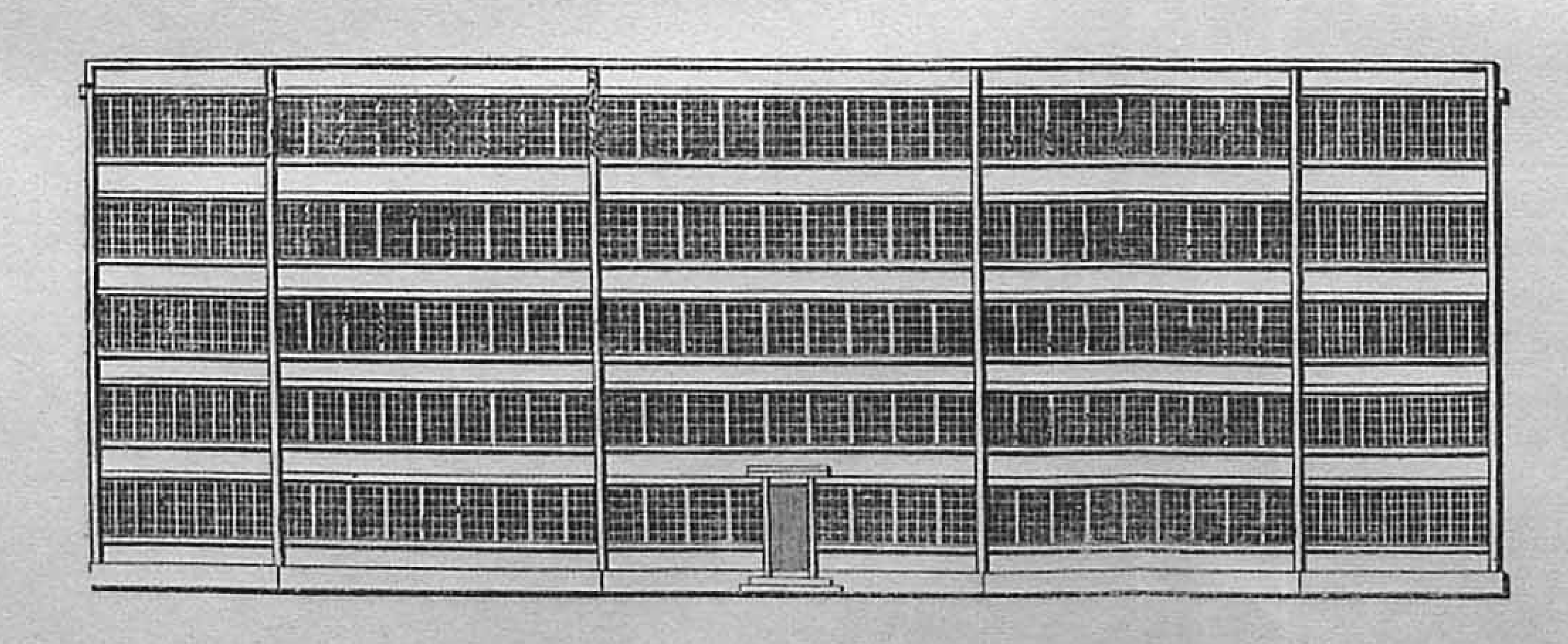


FIG. II.—SECTION

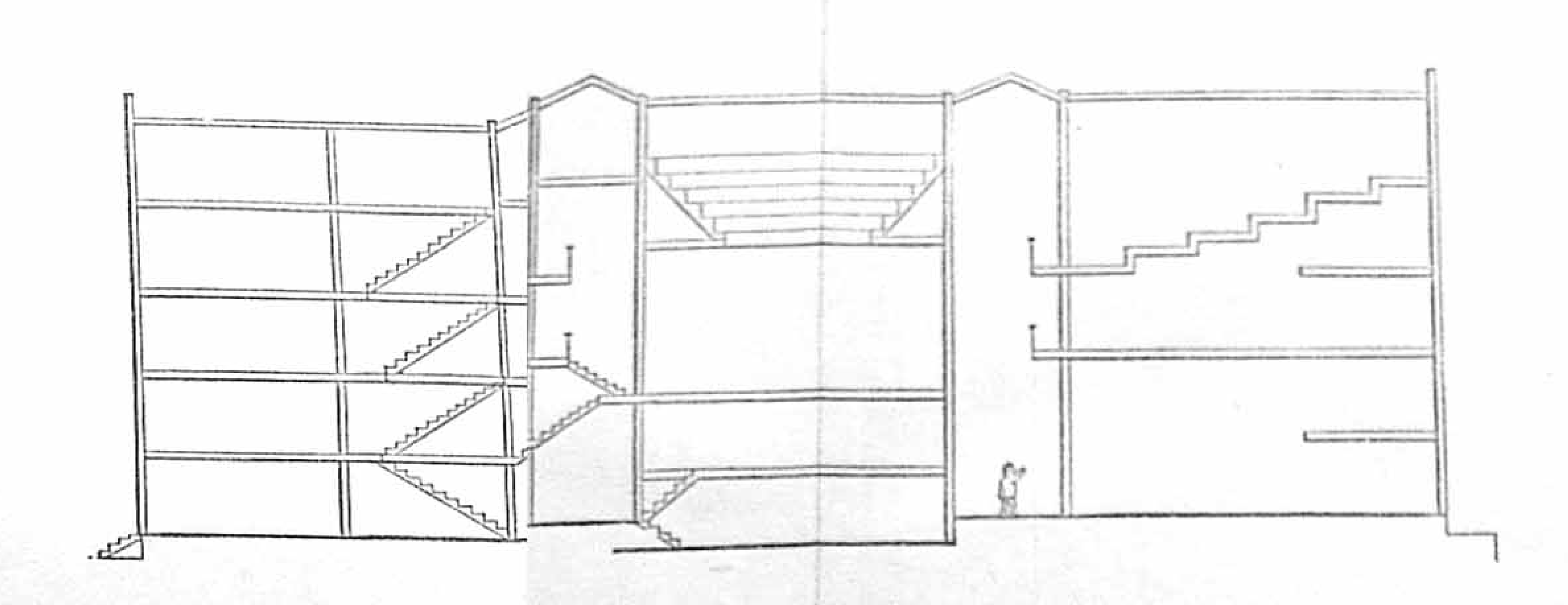


FIG. III.—GROUND PLAN.

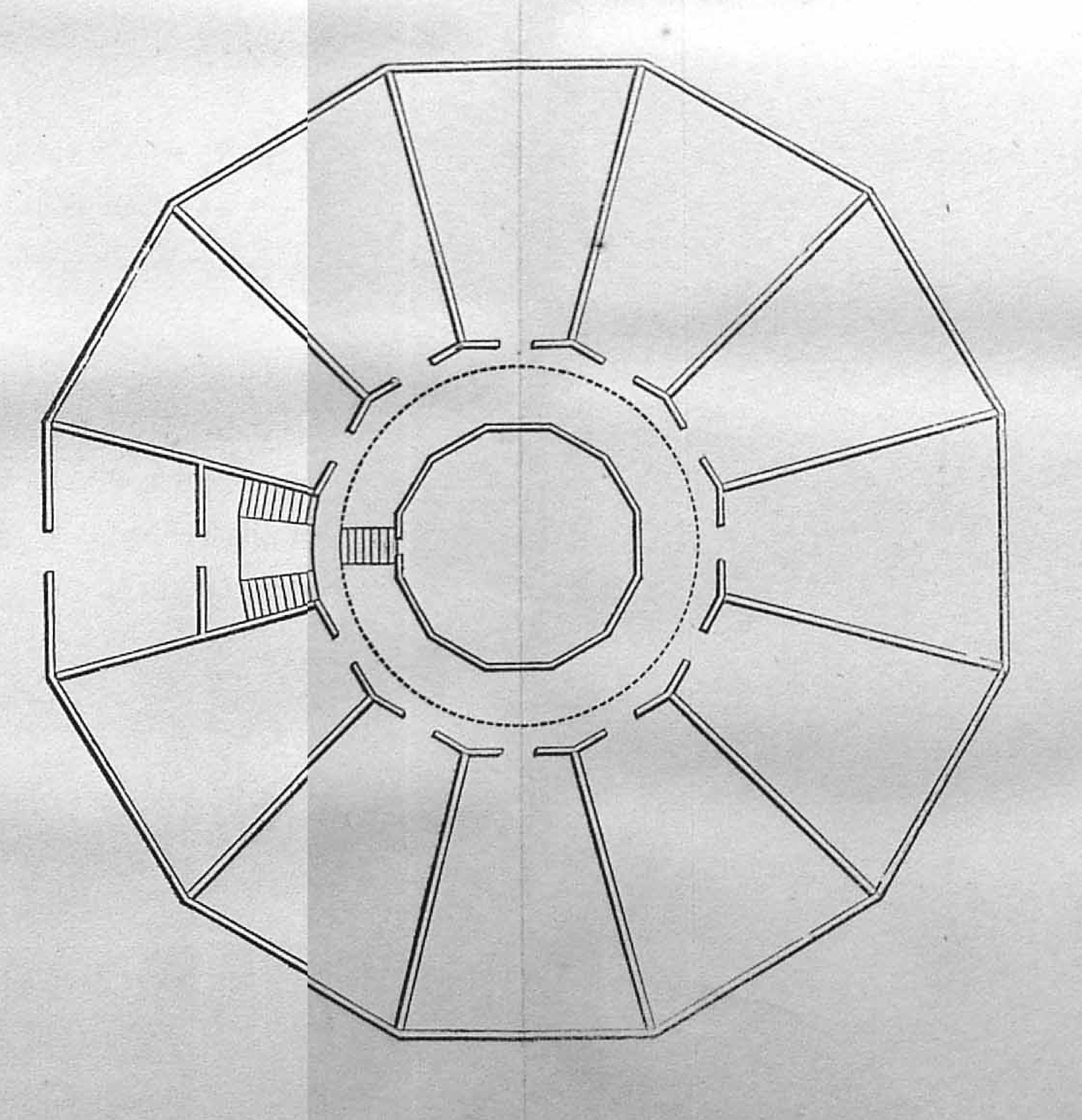


FIG. IV.—BED-STAGES for Single Persons.

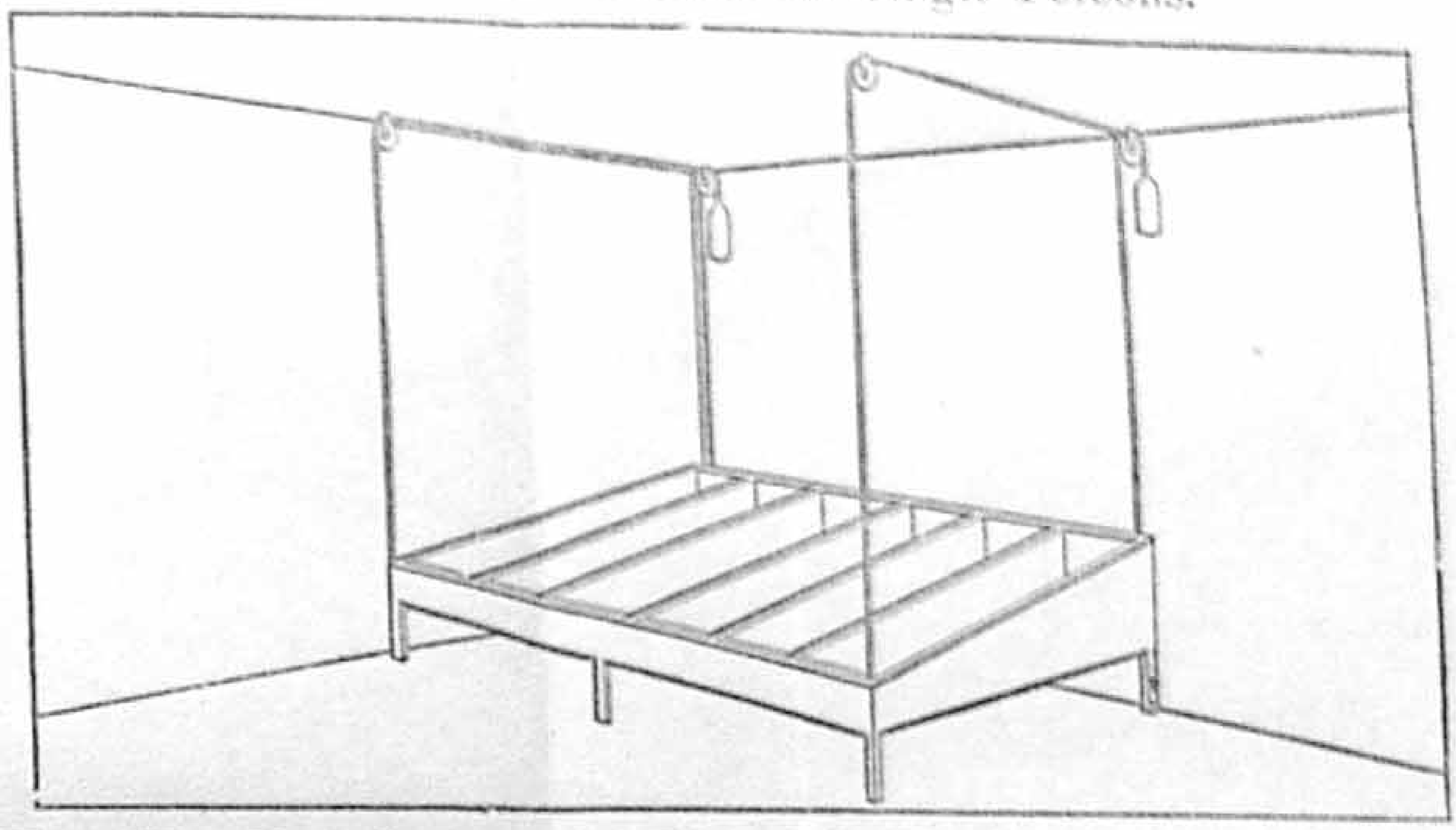


FIG. V.—BED-STAGES for Married Couples; alternating with sets of Cribs for Children, four in a set.

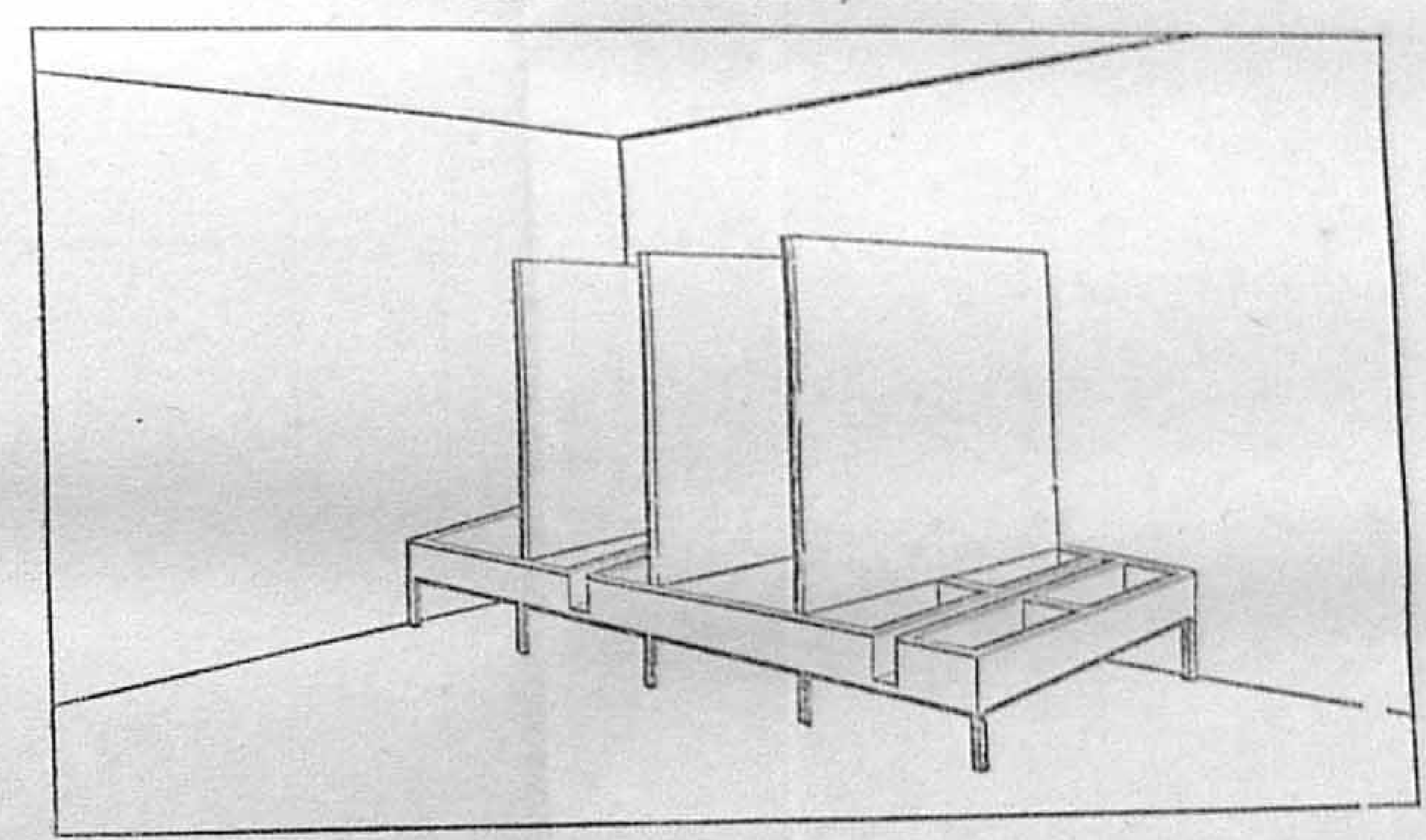
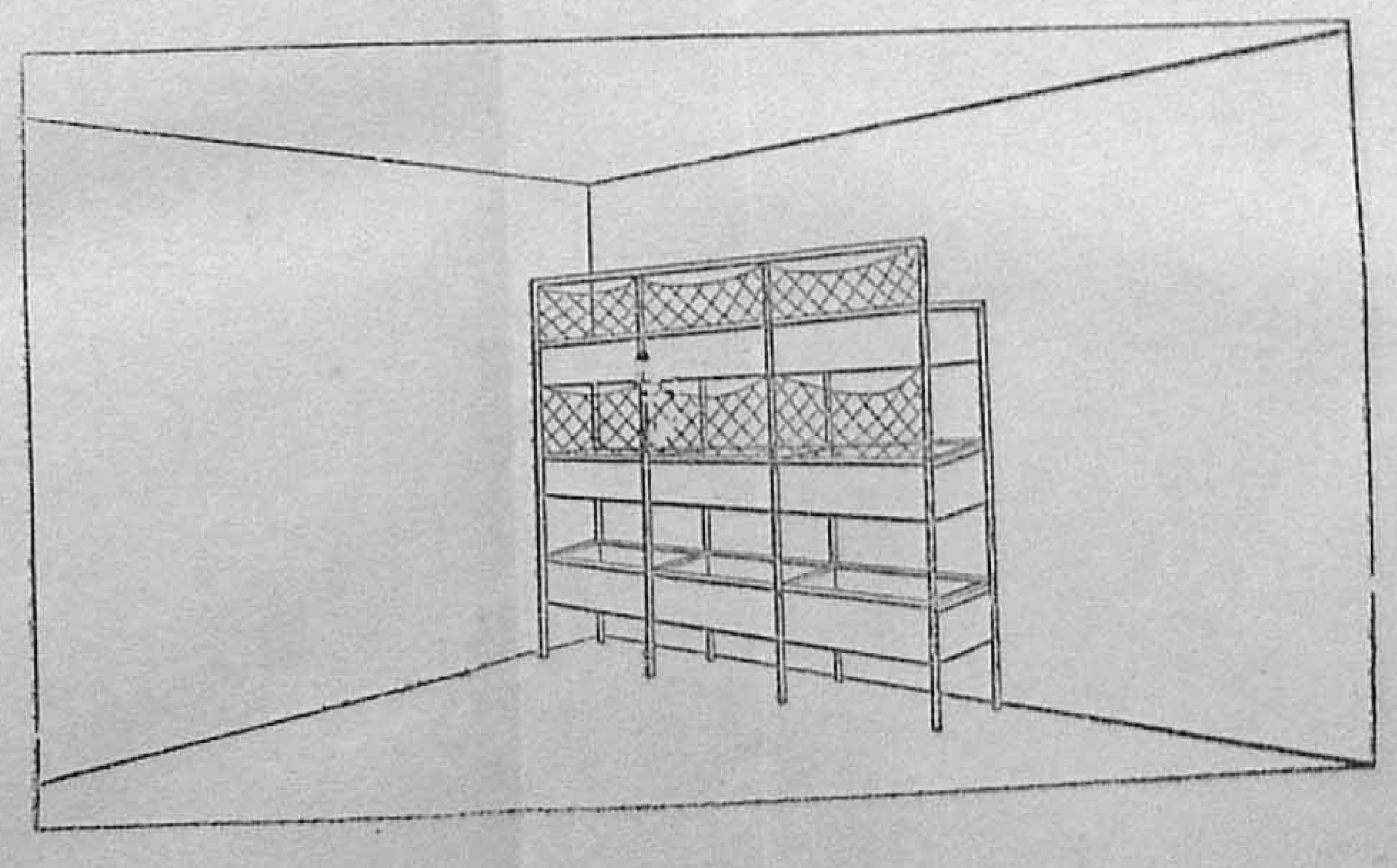
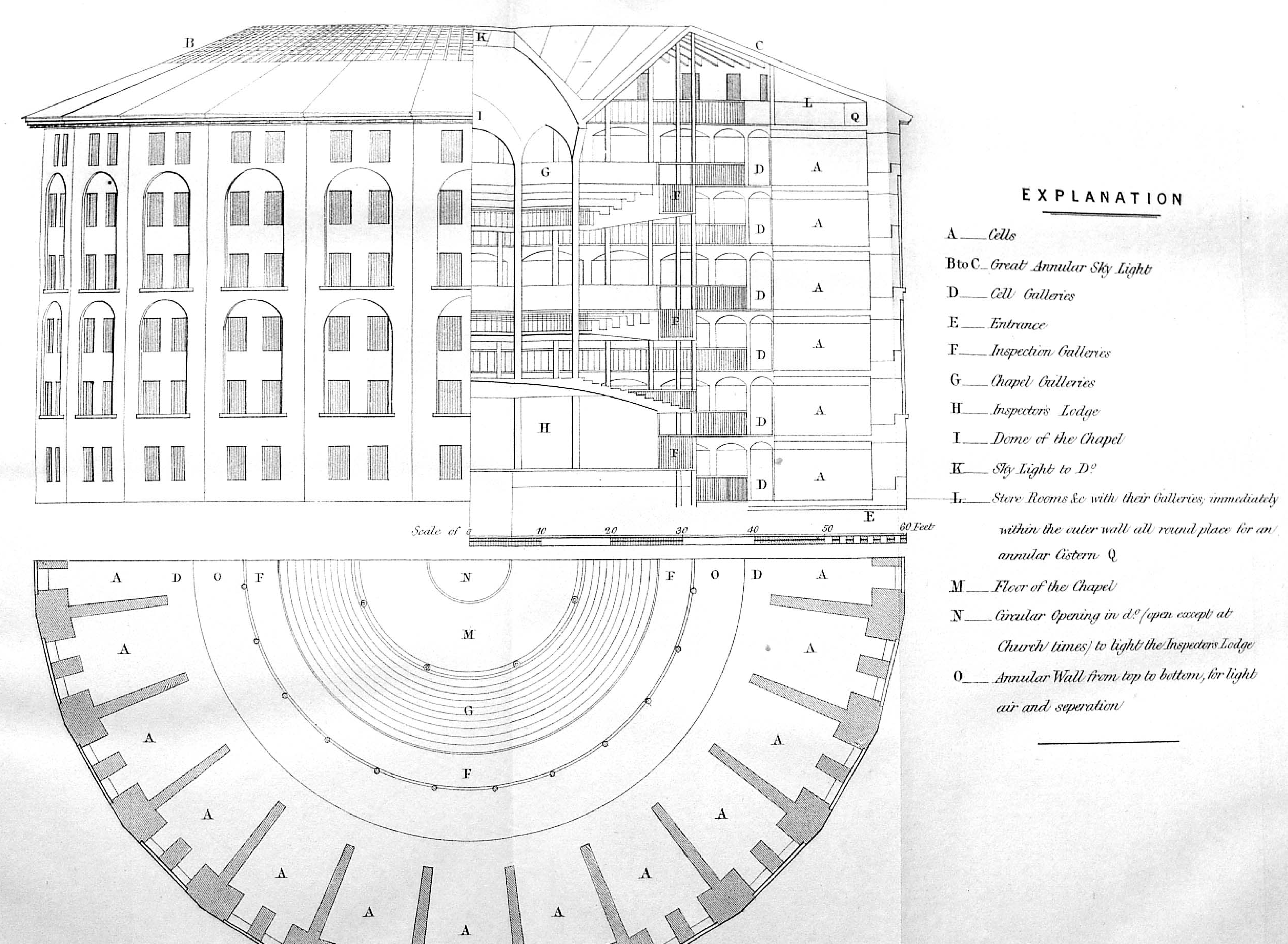


FIG. VI.—CRIBS for Infants.



SAMUEL BENTHAM, Knight of the Order of St George of Russia, Brigadier-General in the Russian Service, and Inspector-General of his Majesty's Naval Works, *invenit*.


A General Idea of a PENITENTIARY PANOPTICON in an Improved, but as yet, Jany 23d 1791, Unfinished State
See Postscript References to Plan, Elevation & Section (being Plate referred to as No 2.)
EXPLANATION
A__Cells
B to C__Great Annular Sky Light
D__Cell Galleries
E__Entrance
F__Inspection Galleries
G__Chapel Galleries
H__Inspector's Lodge
I__Dome of the Chapel
K__Sky Light to Do
L__Store Rooms &c with their Galleries, immediately within the outer wall all round place for an annular Cistern Q
M__Floor of the Chapel
N__Circular Opening in do (open except at Church times) to light the Inspecters Lodge
O__Annular Wall from top to bottom, for light air and seperation
Scale of 0 10 20 30 40 50 60 Feet

PANOPTICON;

OR,

THE INSPECTION-HOUSE:

CONTAINING THE

IDEA OF A NEW PRINCIPLE OF CONSTRUCTION

APPLICABLE TO

ANY SORT OF ESTABLISHMENT, IN WHICH PERSONS OF ANY DESCRIPTION ARE TO BE KEPT UNDER INSPECTION;

AND IN PARTICULAR TO

PENITENTIARY-HOUSES,

PRISONS,
HOUSES OF INDUSTRY,
WORK-HOUSES,
POOR-HOUSES,
MANUFACTORIES,
MAD-HOUSES,
LAZARETTOS,
HOSPITALS,
AND SCHOOLS:

WITH

A PLAN OF MANAGEMENT

ADAPTED TO THE PRINCIPLE:

IN A SERIES OF LETTERS,

WRITTEN IN THE YEAR 1787, FROM CRECHEFF IN WHITE RUSSIA,
TO A FRIEND IN ENGLAND.

BY JEREMY BENTHAM,
OF LINCOLN'S INN, ESQUIRE.

DUBLIN, PRINTED: LONDON, REPRINTED; AND SOLD BY T. PAYNE,
AT THE MEWS GATE, 1791.

CONTENTS.

POSTSCRIPT—PART I.

POSTSCRIPT—PART II.

PANOPTICON,

OR,

THE INSPECTION-HOUSE, &C.

PREFACE.

Morals reformed—health preserved—industry invigorated—instruction diffused—public burthens lightened—Economy seated, as it were, upon a rock—the gordian knot of the Poor-Laws not cut, but untied—all by a simple idea in Architecture!——Thus much I ventured to say on laying down the pen—and thus much I should perhaps have said on taking it up, if at that early period I had seen the whole of the way before me. A new mode of obtaining power of mind over mind, in a quantity hitherto without example: and that, to a degree equally without example, secured by whoever chooses to have it so, against abuse. —Such is the engine: such the work that may be done with it. How far the expectations thus held out have been fulfilled, the reader will decide.

The Letters which compose the body of this tract were written at Crecheff in Russia, and from thence sent to England in the year 1787, much about the same time with the Defence of Usury. They were addressed to a particular person, with a view to a particular establishment then in contemplation (intelligence of which had found its way to me through the medium of an English newspaper), and without any immediate or very determinate view to general publication. The attention of the public in Ireland having been drawn to one of the subjects to which they relate, by the notice given not long ago by the Chancellor of the Exchequer, of a disposition on the part of government there, to make trial of the Penitentiary system, it is on that account that they now see the light through the medium of the Irish press.

They are printed as at first written, with no other alteration than the erasure of a few immaterial passages, and the addition of a Postscript, stating such new ideas as have been the fruit of a more detailed and critical examination, undertaken chiefly with an eye to the particular establishment last mentioned, and assisted by professional information and advice.

In running over the descriptive part of the letters, the reader will find it convenient to remember, that alterations, as stated in the Postscript, have been made, though he need not at that period trouble himself with considering what they are: since in either shape the details will serve equally well for the illustration of the general principle, and for the proof of the advantages that may be derived from it.

In what concerns the Penitentiary system, I may be observed to have discussed, with rather more freedom than may perhaps be universally acceptable, a variety of measures either established or proposed by gentlemen who have laboured in the same line. A task this, which I would gladly have avoided: but complete justice could not otherwise have been done to the plan here proposed, nor its title to preference placed in a satisfactory point of view. Among the notions thus treated, it is with pleasure rather than regret that I observe several which on a former occasion I had myself either suggested or subscribed to. I say with pleasure: regarding the incident as a proof of my having no otherwise done by others than as I not only would be done by, but have actually done by myself: a consideration which will, I hope, make my apology to the respectable gentlemen concerned, and assist their candour in recommending me to their forgiveness. If by the light of reciprocal animadversion I should find myself enabled to rectify any errors of my own which may still have escaped me, the correction, instead of being shrunk from as a punishment, will be embraced as a reward.

In point of method and compression, something might have been gained, had the whole, Letters and Postscript together, been new cast, and the supplemental matter worked up with the original. But time was wanting; and, if the invention be worth any thing, the account given of it will not be the less amusing or less instructive, for being exhibited in an historical and progressive point of view.

The concluding Letter on Schools is a sort of *jeu d'esprit*, which would hardly have presented itself in so light a form, at any other period than at the moment of conception, and under the flow of spirits which the charms of novelty are apt enough to inspire. As such, it may possibly help to alleviate the tedium of a dry discussion, and on that score obtain the pardon, should it fail of receiving the approbation, of the graver class of readers.

LETTER I.

IDEA OF THE INSPECTION PRINCIPLE.

Crecheff in White Russia,
——— 1787.

DEAR ****, — I observed t'other day in one of your English papers, an advertisement relative to a HOUSE of CORRECTION therein spoken of, as intended for *******. It occurred to me, that the plan of a building, lately contrived by my brother, for purposes in some respects similar, and which, under the name of the *Inspection House*, or the *Elaboratory*, he is about erecting here, might afford some hints for the above establishment.* I have accordingly obtained some drawings relative to it, which I here inclose. Indeed I look upon it as capable of applications of the most extensive nature; and that for reasons which you will soon perceive.

To say all in one word, it will be found applicable, I think, without exception, to all establishments whatsoever, in which, within a space not too large to be covered or commanded by buildings, a number of persons are meant to be kept under inspection. No matter how different, or even opposite the purpose: whether it be that of *punishing the incorrigible*, *guarding the insane*, *reforming the vicious*, *confining the suspected*, *employing the idle*, *maintaining the helpless*, *curing the sick*, *instructing the willing* in any branch of industry, or *training the rising race* in the path of *education:* in a word, whether it be applied to the purposes of *perpetual prisons* in the room of death, or *prisons for confinement* before trial, or *penitentiary-houses*, or *houses of correction*, or *work-houses*, or *manufactories*, or *mad-houses*, or *hospitals*, or *schools*.

It is obvious that, in all these instances, the more constantly the persons to be inspected are under the eyes of the persons who should inspect them, the more perfectly will the purpose of the establishment have been attained. Ideal perfection, if that were the object, would require that each person should actually be in that predicament, during every instant of time. This being impossible, the next thing to be wished for is, that, at every instant, seeing reason to believe as much, and not being able to satisfy himself to the contrary, he should *conceive* himself to be so. This point, you will immediately see, is most completely secured by my brother's plan; and, I think, it will appear equally manifest, that it cannot be compassed by any other, or to speak more properly, that if it be compassed by any other, it can only be in proportion as such other may approach to this.

To cut the matter as short as possible, I will consider it at once in its application to such purposes as, being most complicated, will serve to exemplify the greatest force and variety of precautionary contrivance. Such are those which have suggested the idea of *penitentiary-houses:* in which the objects of *safe custody*, *confinement*, *solitude*, *forced labour*, and *instruction*, were all of them to be kept in view. If all these objects can be accomplished together, of course with at least equal certainty and facility may any lesser number of them.

LETTER II.

PLAN FOR A PENITENTIARY INSPECTION-HOUSE.

BEFORE you look at the plan, take in words the general idea of it.

The building is circular.

The apartments of the prisoners occupy the circumference. You may call them, if you please, the *cells*.

These *cells* are divided from one another, and the prisoners by that means secluded from all communication with each other, by *partitions* in the form of *radii* issuing from the circumference towards the centre, and extending as many feet as shall be thought necessary to form the largest dimension of the cell.

The apartment of the inspector occupies the centre; you may call it if you please the *inspector's lodge*.

It will be convenient in most, if not in all cases, to have a vacant space or *area* all round, between such centre and such circumference. You may call it if you please the *intermediate* or *annular* area.

About the width of a cell may be sufficient for a *passage* from the outside of the building to the lodge.

Each cell has in the outward circumference,

* The sudden breaking out of the war between the Turks and Russians, in consequence of an unexpected attack made by the former on the latter, concurred with some other incidents in putting a stop to the design. The person here spoken of, at that time Lieutenant-Colonel Commandant of a battalion in the Empress's service, having obtained a regiment and other honours for his services in the course of the war, is now stationed with his regiment in a distant part of the country.

a *window*, large enough, not only to light the cell, but, through the cell, to afford light enough to the correspondent part of the lodge.

The inner circumference of the cell is formed by an iron *grating*, so light as not to screen any part of the cell from the inspector's view.

Of this grating, a part sufficiently large opens, in form of a *door*, to admit the prisoner at his first entrance; and to give admission at any time to the inspector or any of his attendants.

To cut off from each prisoner the view of every other, the partitions are carried on a few feet beyond the grating into the intermediate area: such projecting parts I call the *protracted partitions*.

It is conceived, that the light, coming in in this manner through the cells, and so across the intermediate area, will be sufficient for the inspector's lodge. But, for this purpose, both the windows in the cells, and those corresponding to them in the lodge, should be as large as the strength of the building, and what shall be deemed a necessary attention to economy, will permit.

To the windows of the lodge there are *blinds*, as high up as the eyes of the prisoners in their cells can, by any means they can employ, be made to reach.

To prevent *thorough light*, whereby, notwithstanding the blinds, the prisoners would see from the cells whether or no any person was in the lodge, that apartment is divided into quarters, by *partitions* formed by two diameters to the circle, crossing each other at right angles. For these partitions the thinnest materials might serve; and they might be made removeable at pleasure; their height, sufficient to prevent the prisoners seeing over them from the cells. Doors to these partitions, if left open at any time, might produce the thorough light. To prevent this, divide each partition into two, at any part required, setting down the one-half at such distance from the other as shall be equal to the aperture of a door.

These windows of the inspector's lodge open into the intermediate area, in the form of *doors*, in as many places as shall be deemed necessary to admit of his communicating readily with any of the cells.

Small *lamps*, in the outside of each window of the lodge, backed by a reflector, to throw the light into the corresponding cells, would extend to the night the security of the day.

To save the troublesome exertion of voice that might otherwise be necessary, and to prevent one prisoner from knowing that the inspector was occupied by another prisoner at a distance, a small *tin tube* might reach from each cell to the inspector's lodge, passing across the area, and so in at the side of the correspondent window of the lodge. By means of this implement, the slightest whisper of the one might be heard by the other, especially if he had proper notice to apply his ear to the tube.

With regard to *instruction*, in cases where it cannot be duly given without the instructor's being close to the work, or without setting his hand to it by way of example before the learner's face, the instructor must indeed here as elsewhere, shift his station as often as there is occasion to visit different workmen; unless he calls the workmen to him, which in some of the instances to which this sort of building is applicable, such as that of imprisoned felons, could not so well be. But in all cases where directions, given verbally and at a distance, are sufficient, these tubes will be found of use. They will save, on the one hand, the exertion of voice it would require, on the part of the instructor, to communicate instruction to the workmen without quitting his central station in the lodge; and, on the other, the confusion which would ensue if different instructors or persons in the lodge were calling to the cells at the same time. And, in the case of hospitals, the quiet that may be insured by this little contrivance, trifling as it may seem at first sight, affords an additional advantage.

A *bell*, appropriated exclusively to the purposes of *alarm*, hangs in a *belfry* with which the building is crowned, communicating by a rope with the inspector's lodge.

The most economical, and perhaps the most convenient, way of *warming* the cells and area, would be by flues surrounding it, upon the principle of those in hot-houses. A total want of every means of producing artificial heat might, in such weather as we sometimes have in England, be fatal to the lives of the prisoners; at any rate, it would often times be altogether incompatible with their working at any sedentary employment. The flues, however, and the fire-places belonging to them, instead of being on the outside, as in hot-houses, should be in the inside. By this means, there would be less waste of heat, and the current of air that would rush in on all sides through the cells, to supply the draught made by the fires, would answer so far the purpose of ventilation. But of this more under the head of Hospitals.*

* There is one subject, which, though not of the most dignified kind, nor of the most pleasant kind to expatiate upon, is of too great importance to health and safe custody to be passed over unconsidered: I mean the provision to be made for carrying off the result of necessary evacuations. A common necessary might be dangerous to security, and would be altogether incompatible with the plan of solitude. To have the filth carried off by the attendants, would be altogether as incompatible with cleanliness; since without such a degree of regularity as it would be difficult, if not ridiculous, to attempt to enforce in case of health, and altogether impossible in case of sickness, the air of each cell, and by that means the

LETTER III.

EXTENT FOR A SINGLE BUILDING.

So far as to the characteristic parts of the principle of construction. You may now, perhaps, be curious to know to what extent a building upon this principle is capable of being carried, consistently with the various purposes to which it may come to be applied. Upon this subject, to speak with confidence belongs only to architects by profession. Indulge me, however, with a few words at a venture.

As to the *cells*, they will of course be more or less spacious, according to the employment which it is designed should be carried on in them.

As to the *whole building*, if it be too small, the circumference will not be large enough to afford a sufficient number of cells: if too large, the depth from the exterior windows will be too great; and there will not be light enough in the lodge.

As to this individual building of my brother's, the dimensions of it were determined by the consideration of the most convenient scantlings of the timbers, (that being in his situation the cheapest material,) and by other local considerations. It is to have two stories, and the diameter of the whole building is to be 100 feet out and out.

Merely to help conception, I will take this size for an example of such a building as he would propose for England.

Taking the diameter 100 feet, this admits of 48 *cells*, 6 feet wide each at the outside, walls included; with a *passage* through the building, of 8 or 9 feet.

I begin with supposing two stories of cells.

In the *under* story, thickness of the walls 2½ feet.

From thence, clear *depth* of each cell from the window to the grating, 13 feet.

From thence to the ends of the *partition walls*, 3 feet more; which gives the length of the *protracted partitions*.

Breadth of the *intermediate area*, 14.

Total from the outside of the building to the *lodge*, 32½ feet.

The double of this, 65 feet, leaves for the *diameter of the lodge*, 35 feet; including the thickness of its walls.

In the *upper* story, the *cells* will be but 9 feet deep; the difference between that and the 13 feet, which is their depth in the under story, being taken up by a *gallery* which surrounds the protracted partitions.

This gallery supplies, in the upper story, the place of an intermediate area on that floor; and by means of *steps*, which I shall come to presently, forms the communication between the upper story of cells to which it is attached, and the lower story of the cells, together with the intermediate area and the lodge.

The spot most remote from the place where the light comes in from, I mean the *centrical* spot of the building and of the lodge, will not be more than 50 feet distant from that place; a distance not greater, I imagine, than what is often times exemplified in churches; even

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lodge itself would be liable to be kept in a state of constant contamination, in the intervals betwixt one visit and another. This being the case, I can see no other eligible means, than that of having in each cell a fixed provision made for this purpose in the construction of the building.

Betwixt every other two cells, at the end of the partition which divides them, a hollow shaft or tunnel is left in the brick-work of the exterior wall; which tunnel, if there be several stories to the building, is carried up through all of them.

Into this tunnel is inserted, under each cell, the bottom of an EARTHEN PIPE (like those applied in England to the tops of chimneys) glazed in the inside. The upper end, opening into the cell, is covered by a seat of cast-iron, bedded into the brick-work; with an aperture, which neither by its size nor shape shall be capable of admitting the body of a man. To gain the tunnel from the inside of the cell, the position of this pipe will of course be slanting. At the bottom of the tunnel, on the outside of the building, an arched opening, so low as scarcely to be discernible, admits of the filth being carried away. No one, who has been at all attentive to the history of prisons, but must have observed how often escapes have been effected or attempted through this channel.

A slight screen, which the prisoner might occasionally interpose, may perhaps not be thought superfluous. This, while it answers the purpose of decency, might be so adjusted as to prevent his concealing from the eye of the inspector any forbidden enterprise.

For each cell, the whole apparatus would not come to many shillings: a small consideration for a great degree of security. In this manner, without any relaxation of the discipline, the advantages of cleanliness, and its concomitant health, may be attained to as great a degree as in most private houses.

It would be regarded, perhaps, as a luxury too great for an establishment of this kind, were I to venture to propose the addition of a WATER-PIPE all around, with a cock to it in each cell. The clear expense would, however, not be quite so great as it might seem: since by this means a considerable quantity of attendance would be saved. To each prisoner, some allowance of water must necessarily be afforded, if it were only for drink, without regard to cleanliness. To forward that allowance by hand to two or three hundred prisoners in so many different apartments, might perhaps be as much as one man could do, if constantly employed. For the raising the water by pumps to necessary elevation, the labour of the prisoners would suffice.

As to the MATERIALS, brick, as every body knows, would be the cheapest in ***, and either brick or stone, in every other part of England. Thus much as to the shell. But in a building calculated for duration, as this would be, the expense of allowing the same materials to the FLOORS, and laying them upon ARCHES, would, I imagine, not be deemed an unsuitable one; especially when the advantage of a perfect security from fire is taken into the account.

in such as are not furnished in the manner of this building, with windows in every part of the exterior boundary. But the inspector's *windows* will not be more than about 32½ feet from the open light.

It would be found convenient, I believe, on many accounts, and in most instances, to make *one story* of the *lodge* serve for *two stories* of the *cells;* especially in any situation where ground is valuable, the number of persons to be inspected large, the room necessary for each person not very considerable, and frugality and necessity more attended to than appearance.

For this purpose, the *floor* of the *ground story of the lodge* is elevated to within about 4½ feet of the floor of the *first story* of the *cells*. By this means, the inspector's eye, when he stands up, will be on, or a little above, the level of the floor of the above mentioned upper story of the cells; and, at any rate, he will command both that and the ground story of the cells without difficulty, and without change of posture.

As to the *intermediate area*, the *floor* of it is upon a level, not with the *floor* of the *lodge*, but with that of the *lower story* of the cells. But at the *upper* story of the cells, its place, as I have already mentioned, is supplied by the above-mentioned *gallery;* so that the altitude of this area from the floor to the ceiling is equal to that of both stories of the cells put together.

The floor of the lodge not being on a level with either story of the cells, but between both, it must at convenient intervals be provided with flights of *steps*, to go *down* to the ground story of the cells by the intermediate area, and *up* to the first floor of the cells by the gallery. The ascending flights, joined to the *descending*, enable the servants of the house to go to the upper story of the cells, without passing through the apartment of the inspector.

As to the *height* of the whole, and of the several parts, it is supposed that 18 feet might serve for *the two stories of cells*, to be inspected, as above, by *one story* of the *lodge*. This would hold 96 persons.

36 feet for four stories of *cells*, and two of the lodge: this would hold 192 persons.

54 feet for six stories of the cells, and three of the lodge: this would hold 288 persons.

And 54 feet, it is conceived, would not be an immoderate elevation.

The drawings which, I believe, will accompany this, suppose *four* for the number of stories of the cells.

You will see, under the head of hospitals, the reasons why I conceive that even a less height than 9 feet, deducting the thickness of a floor supported by arches, might be sufficient for the cells.

The *passage* might have, for its *height*, either the height of one story, or of two stories of the cells, according as the number of those cells was two or four. The part over the passage might, in either case, be added to the lodge, to which it would thereby give a communication, at each end, with the world without doors, and ensure a keeper against the danger of finding himself a prisoner among his prisoners.

Should it be thought, that, in this way, the lodge would not have light enough, for the convenience of a man of a station competent to the office, the deficiency might be supplied by a void space left in that part, all the way up. You may call it if you please the *central area*. Into this space windows may open where they are wanted, from the apartments of the lodge. It may be either left *open* at the top, or covered with a *sky-light*. But this expedient, though it might add, in some respects, to the convenience of the lodge, could not but add considerably to the quantity and expense of the building.

On the other hand, it would be assistant to ventilation. Here, too, would be a proper place for the *chapel:* the prisoners remaining in their cells, and the windows of the lodge, which is almost all window, being thrown open. The advantages derivable from it in point of light and ventilation depending upon its being kept vacant, it can never be wanted for any profane use. It may therefore, with the greater propriety, be allotted to divine service, and receive a regular consecration. The *pulpit* and *sounding-board* may be moveable. During the term of service, the skylight, at all other times kept as open as possible, might be shut.

LETTER IV.

THE PRINCIPLE EXTENDED TO UNCOVERED AREAS.

In my two last letters, I gave you such idea as it was in my power to give you by words, of this new plan of construction, considered in its most *simple* form. A few more with regard to what further *extensions* it may admit of.

The utmost number of persons that could be stowed in a single building of this sort, consistently with the purposes of each several institution, being ascertained, to increase the number, that of the buildings must of course be increased. Suppose *two* of these *rotundas* requisite: these two might, *by a covered gallery* constructed upon the same principles, be consolidated into one inspection-house. And by the help of such a covered gallery, *the field of inspection* might be dilated to any extent.

If the number of rotundas were extended to *four*, a regular uncovered area might in

that way be inclosed; and being surrounded by covered galleries, would be commanded in this manner from all sides, instead of being commanded only from one.

The area thus inclosed might be either *circular* like the buildings, or *square*, or *oblong*, as one or other of those forms were best adapted to the prevailing ideas of beauty or local convenience. A chain of any length, composed of inspection-houses adapted to the same or different purposes, might in this way be carried round an area of any extent.

On such a plan, either one inspector might serve for two or more rotundas, or if there were one to each, *the inspective force*, if I may use the expression, would be greater in such a compound building, than in any of the number singly taken, of which it was composed; since each inspector might be relieved occasionally by every other.

In the uncovered area thus brought within the field of inspection, out-door employments, or any employments requiring a greater covered space than the general form of construction will allow, might be carried on upon the same principle. A kitchen-garden might then be cultivated for the use of the whole society, by a few members of it at a time, to whom such an opportunity of airing and exercising themselves would be a refreshment and indulgence.

Many writers have expatiated with great force and justice, on the unpopular and unedifying cast of that undistinguishing discipline, which, in situation and treatment, confounds the lot of those who *may* prove innocent, with the lot of those who *have been* proved to be guilty. The same roof, it has been said, ought not to inclose persons who stand in predicaments so dissimilar. In a combination of inspection-houses, this delicacy might be observed without any abatement of that vigilance with regard to safe custody, which in both cases is equally indispensable.

LETTER V.

ESSENTIAL POINTS OF THE PLAN.

It may be of use, that among all the particulars you have seen, it should be clearly understood what circumstances are, and what are not, essential to the plan. The essence of it consists, then, in the *centrality* of the inspector's situation, combined with the well-known and most effectual contrivances for *seeing without being seen*. As to the *general form* of the building, the most commodious for most purposes seems to be the circular: but this is not an absolutely essential circumstance. Of all figures, however, this, you will observe, is the only one that affords a perfect view, and the same view, of an indefinite number of apartments of the same dimensions: that affords a spot from which, without any change of situation, a man may survey, in the same perfection, the whole number, and without so much as a change of posture, the half of the whole number, at the same time: that, within a boundary of a given extent, contains the greatest quantity of room:—that places the centre at the least distance from the light:—that gives the cells most width, at the part where, on account of the light, most light may, for the purposes of work, be wanted:—and that reduces to the greatest possible shortness the path taken by the inspector, in passing from each part of the field of inspection to every other.

You will please to observe, that though perhaps it is the most important point, that the persons to be inspected should always feel themselves as if under inspection, at least as standing a great chance of being so, yet it is not by any means the *only* one. If it were, the same advantage might be given to buildings of almost any form. What is also of importance is, that for the greatest proportion of time possible, each man should actually *be* under inspection. This is material in *all* cases, that the inspector may have the satisfaction of knowing, that the discipline actually has the effect which it is designed to have: and it is more particularly material in such cases where the inspector, besides seeing that they conform to such standing rules as are prescribed, has more or less frequent occasion to give them such transient and incidental directions as will require to be given and enforced, at the commencement at least of every course of industry. And I think, it needs not much argument to prove, that the business of inspection, like every other, will be performed to a greater degree of perfection, the less trouble the performance of it requires.

Not only so, but the greater chance there is, of a given person's being at a given time actually under inspection, the more strong will be the persuasion—the more *intense*, if I may say so, the *feeling*, he has of his being so. How little turn soever the greater number of persons so circumstanced may be supposed to have for calculation, some rough sort of calculation can scarcely, under such circumstances, avoid forcing itself upon the rudest mind. Experiment, venturing first upon slight trangressions, and so on, in proportion to success, upon more and more considerable ones, will not fail to teach him the difference between a loose inspection and a strict one.

It is for these reasons, that I cannot help looking upon every form as less and less eligible, in proportion as it deviates from the *circular*.

A very material point is, that room be

allotted to the lodge, sufficient to adapt it to the purpose of a complete and constant habitation for the principal inspector or head-keeper, and his family. The more numerous also the family, the better; since, by this means, there will in fact be as many inspectors, as the family consists of persons, though only one be paid for it. Neither the orders of the inspector himself, nor any interest which they may feel, or not feel, in the regular performance of his duty, would be requisite to find them motives adequate to the purpose. Secluded oftentimes, by their situation, from every other object, they will naturally, and in a manner unavoidably, give their eyes a direction conformable to that purpose, in every momentary interval of their ordinary occupations. It will supply in their instance the place of that great and constant fund of entertainment to the sedentary and vacant in towns—the looking out of the window. The scene, though a confined, would be a very various, and therefore, perhaps, not altogether an unamusing one.

LETTER VI.

ADVANTAGES OF THE PLAN.

I FLATTER myself there can now be little doubt of the plan's possessing the fundamental advantages I have been attributing to it: I mean, the *apparent omnipresence* of the inspector (if divines will allow me the expression,) combined with the extreme facility of his *real presence*.

A collateral advantage it possesses, and on the score of frugality a very material one, is that which respects the *number* of the inspectors requisite. If this plan required more than another, the additional number would form an objection, which, were the difference to a certain degree considerable, might rise so high as to be conclusive: so far from it, that a greater multitude than ever were yet lodged in one house might be inspected by a single person; for the trouble of inspection is diminished in no less proportion than the strictness of inspection is increased.

Another very important advantage, whatever purposes the plan may be applied to, particularly where it is applied to the severest and most coercive purposes, is, that the *under* keepers or inspectors, the servants and subordinates of every kind, will be under the same irresistible controul with respect to the *head* keeper or inspector, as the prisoners or other persons to be governed are with respect to *them.* On the common plans, what means, what possibility, has the prisoner, of appealing to the humanity of the principal for redress against the neglect or oppression of subordinates in that rigid sphere, but the *few* opportunities which, in a crowded prison, the most conscientious keeper *can* afford—but the none at all which many a keeper *thinks* fit to give them? How different would their lot be upon this plan!

In no instance could his subordinates either perform or depart from their duty, but he must know the time and degree and manner of their doing so. It presents an answer, and that a satisfactory one, to one of the most puzzling of political questions—*quis custodiet ipsos custodes?* And, as the fulfilling of his, as well as their, duty would be rendered so much easier, than it can ever have been hitherto, so might, and so should, any departure from it be punished with the more inflexible severity. It is this circumstance that renders the influence of this plan not less beneficial to what is called *liberty*, than to necessary coercion; not less powerful as a controul upon subordinate power, than as a curb to delinquency; as a shield to innocence, than as a scourge to guilt.

Another advantage, still operating to the same ends, is the great load of trouble and disgust which it takes off the shoulders of those occasional inspectors of a higher order, such as *judges* and other *magistrates*, who, called down to this irksome task from the superior ranks of life, cannot but feel a proportionable repugnance to the discharge of it. Think how it is with them upon the present plans, and how it still must be upon the best plans that have been hitherto devised! The cells or apartments, however constructed, must, if there be nine hundred of them (as there were to have been upon the penitentiary-house plan,) be opened to the visitors, one by one. To do their business to any purpose, they must approach near to, and come almost in contact with each inhabitant; whose situation being watched over according to no other than the loose methods of inspection at present practicable, will on that account require the more minute and troublesome investigation on the part of these occasional superintendents. By this new plan, the disgust is entirely removed, and the trouble of going into such a room as the lodge, is no more than the trouble of going into any other.

Were *Newgate* upon this plan, all Newgate might be inspected by a quarter of an hour's visit to Mr. Akerman.

Among the other causes of that reluctance, none at present so forcible, none so unhappily well grounded, none which affords so natural an excuse, nor so strong a reason against accepting of any excuse, as the danger of *infection*—a circumstance which carries death, in one of its most tremendous forms, from the seat of guilt to the seat of justice, involving in one common catastrophe the violator and the upholder of the laws. But in a spot so constructed, and under a

course of discipline so insured, how should infection ever arise? or how should it continue? Against every danger of this kind, what private house of the poor, one might almost say, or even of the most opulent, can be equally secure?

Nor is the disagreeableness of the task of superintendence diminished by this plan, in a much greater degree than the efficacy of it is increased. On all others, be the superintendent's visit ever so unexpected, and his motions ever so quick, time there must always be for preparations blinding the real state of things. Out of nine hundred cells, he can visit but one at a time, and, in the meanwhile, the worst of the others may be arranged, and the inhabitants threatened, and tutored how to receive him. On this plan, no sooner is the superintendent announced, than the whole scene opens instantaneously to his view.

In mentioning inspectors and superintendents who are such by office, I must not overlook that system of inspection, which, however little heeded, will not be the less useful and efficacious: I mean, the part which individuals may be disposed to take in the business, without intending, perhaps, or even without thinking of, any other effects of their visits, than the gratification of their own particular curiosity. What the inspector's or keeper's family are with respect to *him*, that, and more, will these spontaneous visitors be to the superintendent, — assistants, deputies, in so far as he is faithful, witnesses and judges, should he ever be unfaithful, to his trust. So as they are but there, what the motives were that drew them thither is perfectly immaterial; whether the relieving of their anxieties by the affecting prospect of their respective friends and relatives thus detained in durance, or merely the satisfying that general curiosity, which an establishment, on various accounts so interesting to human feelings, may naturally be expected to excite.

You see, I take for granted as a matter of course, that under the necessary regulations for preventing interruption and disturbance, the doors of these establishments will be, as, without very special reasons to the contrary, the doors of all public establishments ought to be, thrown wide open to the body of the curious at large — the great *open committee* of the tribunal of the world. And who ever objects to such publicity, where it is practicable, but those whose motives for objection afford the strongest reasons for it?

LETTER VII.

PENITENTIARY-HOUSES—SAFE CUSTODY.

DECOMPOSING the plan, I will now take the liberty of offering a few separate considerations, applicable to the different purposes to which it appears capable of being applied.

A *Penitentiary-house*, more particularly is (I am sorry I must correct myself, and say, was to have been) what every prison might, and in some degree at least ought to be, designed at once as a place of *safe custody*, and a place of *labour*. Every such place must necessarily be, whether designed or not, an *hospital* — a place where sickness will be found at least, whether provision be or be not made for its relief. I will consider this plan in its application to these three distinguishable purposes.

Against *escapes*, and in particular on the part of felons of every description, as well before as after conviction, persons from the desperateness of whose situation attempts to escape are more particularly to be apprehended, it would afford, as I dare say you see already, a degree of security, which, perhaps, has been scarce hitherto reached by conception, much less by practice. Overpowering the guard requires an union of hands, and a concert among minds. But what union, or what concert, can there be among persons, no one of whom will have set eyes on any other from the first moment of his entrance? Undermining walls, forcing iron bars, requires commonly a concert, always a length of time exempt from interruption. But who would think of beginning a work of hours and days, without any tolerable prospect of making so much as the first motion towards it unobserved? Such attempts have been seldom made without the assistance of implements introduced by accomplices from without. But who would expose themselves even to the slightest punishment, or even to the mortification of the disappointment, without so much as a tolerable chance of escaping instantaneous detection? — Who would think of bringing in before the keeper's face, so much as a small file, or a phial of *aqua fortis*, to a person not prepared to receive any such thing, nor in a condition to make use of it?* Upon all plans hitherto pursued, the thickest walls have been found occasionally unavailing: upon this plan, the thinnest would be sufficient — a circumstance which must operate, in a striking degree, towards a diminution of the expense.

In this, as in every other application of the

* Should such strictness be thought requisite, visitors, if admitted into the intermediate area, might be precluded by a rail, from approaching nearer than to a certain distance from the cells; and, in some cases, all conversation between them and the prisoners might be interdicted altogether. The propriety of such a regulation may be thought to stand upon a different footing, according as the confinement were previous or subsequent to conviction, and according to the nature of the offence, and the intended severity of the punishment.

plan, you will find its lenient, not less conspicuous than its coercive, tendency; insomuch that, if you were to be asked who had most cause to wish for its adoption, you might find yourself at some loss to determine between the malefactors themselves, and those for whose sake they are consigned to punishment.

In this view I am sure you cannot overlook the effect which it would have in rendering unnecessary that inexhaustible fund of disproportionate, too often needless, and always unpopular severity, not to say torture — the use of *irons*. Confined in one of these cells, every motion of the limbs, and every muscle of the face exposed to view, what pretence could there be for exposing to this hardship the most boisterous malefactor? Indulged with perfect liberty within the space allotted to him, in what worse way could he vent his rage, than by beating his head against the walls? and who but himself would be a sufferer by such folly? Noise, the only offence by which a man thus engaged could render himself troublesome (an offence, by the bye, against which irons themselves afford no security,) might, if found otherwise incorrigible, be subdued by *gagging* — a most natural and efficacious mode of prevention, as well as punishment, the prospect of which would probably be for ever sufficient to render the infliction of it unnecessary. Punishment, even in its most hideous forms, loses its odious character, when bereft of that *uncertainty*, without which the rashest desperado would not expose himself to its stroke. If an instance be wanted, think what the means are, which the so much admired law of England makes use of, and that in one of its most admired branches, to work, not upon criminals, but upon its favourite class of judges? what but death? and that no common death, but death the slow but necessary result of lingering torture. And yet, whatever other reproach the law may be thought to merit, in what instance was it ever seen to expose itself in this way to the reproach of cruelty?

LETTER VIII.

USES — PENITENTIARY-HOUSES — REFORMATION.

IN my last, I endeavoured to state to you the advantages which a receptacle, upon the plan of the proposed building, seemed to promise in its application to places of *confinement*, considered merely in that view. Give me leave now to consider it as applicable to the joint purposes of *punishment*, *reformation*, and *pecuniary economy*.

That in regard to persons of the description of those to whom punishments of the nature in question are destined solitude is in its nature subservient to the purpose of reformation, seems to be as little disputed, as its tendency to operate in addition to the mass of sufferance. But that upon this plan that purpose would be effected, at least as completely as it could be on any other, you cannot but see at the first glance, or rather you must have observed already. In the condition of *our* prisoners (for so I will call them for shortness sake) you may see the student's paradox, *nunquam minus solus quam cum solus*, realized in a new way: to the keeper, a *multitude*, though not a *crowd;* to themselves, they are *solitary* and *sequestered* individuals.

What is more, you will see this purpose answered more completely by this plan, than it could possibly be on any other. What degree of solitude it was proposed to reduce them to in the once-intended penitentiary-houses, need not be considered. But for one purpose, in buildings of any mode of construction that could then and there have been in view, it would have been necessary, according to the express regulations of that plan, that the law of solitude should be dispensed with; I mean, so often as the prisoners were to receive the benefits of attendance on Divine service. But in my brother's circular penitentiary-houses, they might receive these benefits, in every circumstance, without stirring from their cells. No thronging nor jostling in the way between the scene of work and the scene destined to devotion; no quarrellings, nor confederatings, nor plottings to escape; nor yet any whips or fetters to prevent it.

LETTER IX.

PENITENTIARY-HOUSES — ECONOMY — CONTRACT — PLAN.

I AM come now to the article of *pecuniary economy;* and as this is the great rock upon which the original penitentiary-plan I understand has split, I cannot resist the temptation of throwing out a few hints relative to the mode of management, which I look upon as the most eligible in this view; but which could not, as you will see, have been established with anything like the advantage, upon any other ground than that of my brother's inspection principle.

To come to the point at once, I would do the whole by *contract*. I would farm out the profits, the no-profits, or if you please the losses, to him who, being in other respects unexceptionable, offered the best terms. Undertaking an enterprise new in its extent, in the description of the persons to be subjected to his management, and in many other circumstances, his success in it, if he does succeed, may be regarded in the light of an invention, and rewarded accordingly, just as

success in other inventions is rewarded, by the profit which a monopoly secured by patent enables a man to make; and that in proportion to the success which constitutes their merit. He should have it during *good behaviour;* which you know is as much as to say, unless specific instances of misbehaviour, flagrant enough to render his removal expedient, be proved on him in a legal way, he shall have it for his *life*. Besides that when thus secured he can afford to give the better price for his bargain, you will presently see more material reasons to counterbalance the seeming unthriftiness of granting him a term, which may prove so long a one. In other respects, the terms of the contract must, of course, depend upon the proportion of capital, of which the contract gave him the use. Supposing the advance to amount to the whole manufacturing stock, he must of course either pay something for his contract, or be contented with a *share* of the gross profits, instead of the whole, unless that from such profits an interest upon the capital so advanced to him should be deducted: in which case, nobody, I suppose, would grudge him the whole net profit after such deduction, even though the rate of interest were much below the ordinary one: the difference between such reduced rate of interest and the ordinary one, would constitute the whole of the expense which the public would be at. Suppose, to speak at random, this expense were to amount to £6000, £8000, or £10,000 a-year, for the 3000 convicts which, it was computed, would be the standing number to be maintained in England,* I should not imagine that such a sum as even this latter would be much grudged. I fancy the intended expedition to Botany Bay, of which I am just apprized, will be rather more expensive. Not that it appears to me that the nation would remain saddled with any such expense as this at the long run, or indeed with any part of it. But of this hereafter.

In the next place, I would give my contractor all the *powers* that his interest could prompt him to wish for, in order to enable him to make the most of his bargain, with only some slight reservations, which I will mention afterwards; for very slight ones you will find they will be, that can be needful or even serviceable in the view of preventing abuse.

But the greater latitude he has in taking such measures, the less will he grudge the letting it be known what the measures are which he *does* take, knowing, at the same time, that no advantage can be taken of such knowledge, by turning him out in case of his success, and putting in another to reap the fruits of his contrivance. I will then require him to *disclose*, and even to print and *publish* his accounts — the whole process and detail of his management — the whole history of the prison. I will require him, I say, on pain of forfeiture or other adequate punishment, to publish these accounts, and that upon oath. I have no fear of his not publishing *some* accounts, because, if the time is elapsed and some accounts not published—a fact not liable to dispute — the punishment takes place or course: and I have not much fear that the accounts, when published, will not be *true;* because, having power to do every thing that is for his advantage, there is nothing which it is his interest to conceal; and the interest which the punishment for perjury gives him not to conceal, is manifest, more especially as I make him examinable and cross-examinable *viva voce* upon oath at any time.

It is for clearing away as much as possible every motive of pecuniary interest that could prompt him to throw any kind of cloak or reserve upon any of his expedients for increasing his profits, that I would insure them to him for *life*.

From the information thus got from him, I derive this advantage. In the case of his *ill* success, I see the causes of it, and not only I, but every body else that pleases, may see the causes of it; and amongst the rest, those who, in case of their taking the management out of his hands, would have an interest in being acquainted with such causes, in order to obviate or avoid them. More than that, if his ill success is owing to incapacity, and that incapacity such as, if continued, might raise my expense above the calculation, I can make him stop in time—a measure to which he can have as little objection as myself; for it is one advantage of this plan, that whatever mischief happens must have more than eaten out all *his* profits before it reaches *me*.

In the case of his good success, I see the causes of that too; and every body sees them, as before; and, amongst others, all persons who could propose to themselves to get into a situation similar to his, and who in such case would naturally promise themselves, in the event of their getting into his situation, a success equal to his — or rather superior; for such is the presumption and vanity natural to man.

Without such publication, whom should I have to deal with, besides him? certainly, in comparison, but a very few; not many more than I may have had at first: the terms, of course, disadvantageous as at first; for disadvantageous terms at first, while all is yet in darkness, they certainly must be.

After such publication, whom should I have then? I should have every body; every body who, by fortune, experience, judgment,

* According to the hard-labour bill, 2865. See the table to my View of that bill: since then, I fear, the number has rather increased than diminished.

disposition, should conceive himself able, and find himself inclined, to engage in such a business; and each person seeing what advantage had been made, and how, would be willing to make his offer in proportion. What situation more favourable for making the best terms?

These best terms, then, I should make at his death, even for his establishment; but long before that, had I others upon the carpet, I should make similar good terms for all those others. Thus I make his advantage mine, not only after it has ceased to be his, but almost as soon as it commences so to be: I thus get his success in all the rest, by paying for it only in the one; and in that not more than it was necessary to pay for it.

But *contractors*, you will say perhaps, or at least if you don't, there are enough that will, "*are a good-for-nothing set of people; and why should we be fleeced by them? One of them perjured himself not long ago, and we put him into the pillory. They are the same sort of gentry that are called farmers-general in France, and publicans in the Gospel, where they are ranked with sinners; and nobody likes them anywhere.*" All this, to be sure, is very true: but if you put one of them into the *pillory*, you put another of them into the *post-office;* and if in the devoted city five righteous would have screened the whole gang from the perdition called for by the enormities of ninety-five unrighteous, why should not the merits of one Palmer be enough to make it up for the demerits of twenty Atkinsons? Gentlemen in general, as I have had manifold occasion to observe, love close reasoning, and here they have it. It might be thought straying from the point, if I ventured to add, that gentlemen in the corn trade, or in any other trade, have not commonly quite so many witnesses to *their bargains*, as my contractor would have to the management of *his* house.

LETTER X.

CHOICE OF TRADES SHOULD BE FREE.

In my last I troubled you with my sentiments on the duration of the first contract, and the great article of *publicity* in the management, which was my motive for admitting of a duration so unlimited. But long before my contractor and I had come to any settlement about these points, he would have found various questions to propose to me. One thing he would not fail to say to me is—*What trades may I put my men to when I have got them?* My answer is soon given. *Any whatever that you can persuade them to turn their hands to.* Now, then, Sir, let us think for a moment, if you please, what trades it may be most for his *advantage* to put them to, and what it is therefore *most likely* he should be disposed to put them to.

That he may get the better view of them, I throw them into *four* classes. In the *first*, I place those who already are possessed of businesses capable of being carried on with advantage in the prison: in the *second*, those trained up to businesses which, though not capable in themselves of being carried on within such limits, yet by the similarity of operation have a tendency to render it more or less easy for a man to learn some of those other businesses which *are:* in the *third* rank, I would place such as had been trained up indeed to industry, but to branches which have no such tendency as I have just mentioned; such, for instance, as porters, coal-heavers, gardeners, and husbandmen. In the last I would place men regularly brought up to the profession of thieving, and others who have never been brought up to any kind of industry. Some names for these different classes I may as well endeavour to find as not; for names they must have when they get into their house; and if I perform not that business myself, somebody else must do it for me. I will call them the *good* hands, the *capable* hands, the *promising* hands, and the *drones.* As to the *capable* hands, they will, of course, be the more valuable, the nearer the businesses they understand approach to those of the *good* ones; in other words, the less difficulty there would be in teaching the latter the business of the former. The same observation of course applies to the *promising* hands; in as far as the advantage which the one possess by habit the others may appear to possess by disposition. Lower down in the scale of detail I will not attempt to lead you.

You have a very pretty law in England for enriching the country, by keeping boys backward, and preventing men from following the trades they could get most by. If I were jealous of Russia's growing too rich, and being able to buy too many of our goods, I would try to get such a law as that introduced among these stupid people here, who have never yet had the sense to think of any such thing. Having no such jealousy against any country, much less against my own Utopia, I would beg that law might be banished from within my walls. I fancy my contractor would be as well pleased with its room as its company; and as the same indulgence has been granted to other persons of whose industry no great jealousy seems to be entertained, such as soldiers and sailors, I have no great fear the indulgence would be denied me. Much I believe is not apprehended in that way from the red-coats and jack-tars; and still less, I believe, would be apprehended from my heroes.

This stumbling-block cleared away, the

first thing I imagine my contractor would do, would be to set to work his *good* hands; to whom he would add as many of his *capable* hands as he could muster.

With his *promising* hands and his *drones*, he would set up a manufacture. What, then, shall this manufacture be? *It may be this, and that, and t'other thing*, says the hard-labour bill: *it shall be anything or everything*, say I.

As to the question, *What sort of manufacture or manufacturer would be likely to answer best?* it is a discussion I will not attempt to lead you into, for I do not propose at present to entertain you with a critical examination of the several actual and possible manufactures, established and establishable in Great Britain. The case, I imagine, would be, that some manufacturer or other would be the man I should have for my contractor—a man who, being engaged in some sort of business that was easy to learn, and doing pretty well with as many hands as he was able to get upon the ordinary terms, might hope to do better still with a greater number, whom he could get upon much better terms. Now, whether there are any such manufacturers, and how many, is what I cannot so well tell you, especially at this distance; but, if you think it worth while to ask Mr. Daily Advertiser, or Mr. St. James' Chronicle, I fancy it will not be long before you get some answer.

In my *View of the Hard-Labour Bill*, I ventured to throw out a hint upon the subject of putting the good hands to their own trades. Whether any and what use was made of that hint, I cannot recollect; for neither the act which passed afterwards, nor any chapter of that history, has travelled with me to *Crecheff;* nor should I have had a single scrap of paper to refresh my memory on that subject, but for the copy of my own pamphlet which I found on my brother's shelf. The general notion seemed to be, that as the people were to be made to work for their punishment, the works to be given to them should be somewhat which they would not like; and, in that respect, it looks as if the consideration of punishment, with its appendage of reformation, had kept the other of economy a little behind the curtain. But I neither see the great danger nor the great harm of a man's liking his work too well; and how well soever he might have liked it *elsewhere*, I should still less apprehend his liking the thought of having it to do *there*. Supposing no sage regulations made by any body to nail them to this or that sort of work, the work they would naturally fall upon under the hands of a contractor would be that, whatever it might be, by which there was most money to be made; for the more the prisoner-workman got, the more the master could get out of him; so that upon that point I should have little fear of their not agreeing. Nor do I see why labour should be the less *reforming* for being profitable. On the contrary, among working men, especially among working men whom the discipline of the house would so effectually keep from all kinds of mischief, I must confess I know of no test of reformation so plain or so sure as the improved quantity and value of their work.

It looks, however, as if the authors of the above provision had not quite so much faith in such an arrangement as I must confess I have. For the choice of the trade was not to be left to the governor of the prison, much less to the prisoner-workman, but was given to *superintending committees of justices of the peace*. In choosing among the employments exemplified, and other similar ones (for if I mistake not this restriction of similarity was subjoined) it was indeed recommended to those magistrates to take " such employments as they should deem most conducive to profit." But the profit here declared to be in view was, not the profit of the *workman* or his master the *governor*, but I know not what profit " of the *district*," the " convenience" of which (though I know not what convenience there could be, distinct from profit) was another land-mark given them to steer by. If you cast an eye on the trades exemplified (as I believe I must beg you to do presently) you will find some difficulty, I believe, in conceiving that in the choice of them the article of profit could have been the uppermost consideration. Nor was this all; for besides the vesting of the choice of the employments in committees of justices in the first instance, the same magistrates are called upon to exercise their judgment and ingenuity in dividing the prisoners into classes; in such sort, that the longer a man had stayed in the house his labour should be less and less " severe," exception made for delinquency, in which case a man might at any time be turned down from an upper class to a lower. But had the matter been left to a contractor and his prisoner-workmen, they would have been pretty sure to pitch upon, and to stick to, what would be most conducive to *their* profit, and by *that* means to the profit of the district; and that without any recommendation. Whether the effect of that recommendation would have been equally sure upon the above-mentioned magistrates, would have remained to be decided by experience. Understanding me to be speaking merely of a magistrate in the abstract, you will forgive my saying, that in this one point I have not quite so great a confidence in a set of gentlemen of that description, as I have in that sort of knave called a contractor. I see no sort of danger, that to the contractor there should be any one object upon earth dearer than the interest of the contractor; but I see some

danger that there may be, now and then by accident, some other object rather dearer to the magistrate. Among these rival objects, if we do not always reckon the pleasure of plaguing the contractor, should he and the magistrate chance not to agree, we may however not unfrequently reckon the exercise of his (the magistrate's) own power, and the display of his own wisdom; the former of which, he may naturally enough conceive, was not given to him for nothing, nor the latter confided in without cause. You must, I think, before now have met with examples of men, that had rather a plan of the public's, or even of an individual's for whom they had a more particular regard, should miscarry under their management, than prosper under a different one.

But if, without troubling yourself about general theories of human nature, you have a mind for a more palpable test of the propriety of this reasoning, you may cut the matter short enough, by making an experiment upon a contractor, and trying whether he will give you as good terms with these clogs about him, as he would without them. Sure I am, that, were I in his place, I should require no small abatement to be made to me, if, instead of choosing the employments for my own men, I was liable at every turn to have them taken out of my hands and put to different employments, by A, B, and C to-day, and by X, Y, and Z to-morrow.

Upon the whole, you will not wonder that I should have my doubts at present, whether the plan was rendered much better for these ingenious but complicated refinements. They seemed mighty fine to me at the time, for when I saw contrivance, I expected success proportionable.

LETTER XI.

MULTIPLICATION OF TRADES IS NOT NECESSARY.

So far as to the *choice* of businesses: As to the new ones, I see no reason why any point should be made of *multiplying* them: a single one, well chosen, may answer the purpose, just as well as ever so many more. I mention this, because though it may be easy to find one species of manufacture, or five, or ten, that might answer with workmen so cramped, and in a situation so confined, it might not be quite so easy to find fifty or a hundred. The number of hands for which employment is to be found, can scarcely be admitted as a reason for multiplying the subjects of manufacture. In such a nation as Great Britain, it is difficult to conceive that the greatest number of hands that can be comprised in such an establishment, should be great enough to overstock the market; and if this island of ours is not big enough, this globe of ours is still bigger. In many species of manufacture, the work is performed with more and more advantage, as every body knows, the more it can be divided; and, in many instances, what sets bounds to that division, is rather the number of hands the master can afford to maintain, than any other circumstance.

When one turns to the hard-labour bill, it looks as if the framers of it had been under some anxiety to find out businesses that they thought might do in their penitentiary-houses, and to make known the result of their discoveries. It accordingly proposes for consideration a variety of examples. For such of the prisoners as were to be worked the hardest: 1. treading in a wheel; 2. drawing in a capstern for turning a mill or other machine or engine; 3. beating hemp; 4. rasping logwood; 5. chopping rags; 6. sawing timber; 7. working at forges; 8. smelting. For those who are to be most favoured: 1. making ropes; 2. weaving sacks; 3. spinning yarn; 4. knitting nets.

I find some difficulty, however, in conceiving to what use this instruction was destined, unless it were the edification of that class of legislators, more frequently quoted for worth than knowledge—the country gentlemen. To some gentlemen of that respectable description, it might, for aught I know, be matter of consolation to see that industry could find so many shapes to assume, on such a stage. But if it was designed to give a general view of the purposes to which manual labour may be applied, it goes not very far, and there are publications enough that go some hundreds of times farther. If the former of its two chapters was designed as a specimen of such works of a particularly laborious cast, as are capable of being carried on to the greatest advantage, or with least advance of capital, or with the greatest security, against workmen of so refractory a complexion—or if either chapter was destined as a specimen of employments that required least extent of room—in any of these cases the specimen seems not a very happy one:—1*st* and 2*d*, Of the *treading in a wheel*, or *drawing in a capstern for turning a mill*, nothing can be said in respect of pecuniary productiveness, till the mill, the machine, or the engine, are specified; nor anything that can be found to distinguish them from other employments, except the room and the expense which such implements seem more particularly to require. 3*d*, *Beating of hemp* is a business too proverbial to be unknown to any body, and in those establishments where it has had compulsion for its motive, has not hitherto, I believe, proved a very profitable one; and if I may believe people who are of the trade, and who have no interest to mislead me,

hemp beaten by hand, though it takes more labour, does not fetch so good a price, as when beaten at a water-mill. 4*th*, *Rasping logwood* is an employment which is said by Mr. Howard, I think, and others, to be carried on in some work-houses of Holland, and I believe to some profit. But I know it has been carried on likewise by the natural *primum mobiles;* witness a wind-mill, which, I remember, a tenant of yours employed in this way; and I can conceive few operations in which those natural powers promise to have greater advantage over the human. 5*th*, *Chopping rags* is a business that can answer no other purpose than the supplying materials for paper-mills, which cannot anywhere be established without a supply of *running-water*—an element which, I am sure in many, and, I am apt to think, in all paper-mills hitherto established, affords for this operation a *primum mobile* much more advantageous than human labour. In the 6*th*, 7*th*, and 8*th* examples, viz. *sawing timber*, *working at forges*, and *smelting*, I see nothing to distinguish them very remarkably from three hundred others that might be mentioned, unless it be the great room they all of them occupy, the great and expensive establishment which they suppose, or the dangerous weapons which they put into the hands of any workman who may be disposed to turn that property to account. 9*th*, As to *rope making*, which stands at the head of the less laborious class, besides being, as I always understood, remarkably otherwise, it has the particular property of taking up more room than, I believe, any other manufacturing employment that was ever thought of. As to the three last articles of the dozen, viz. *weaving sacks, spinning yarn, and knitting nets*, I know of no particular objections that can be made to them, any more than to three score others. But, without going a stone's throw from the table I am writing upon, I could find more than as many businesses, which pay better in England, than these three last, in other respects exceptionable ones, which are as easy to learn, take up as little room, and require a capital nearly, or quite as moderate, to set up. By coming here, if I have learnt nothing else, I have learnt what the human powers are capable of, when unfettered by the arbitrary regulations of an unenlightened age; and gentlemen may say what they please, but they shall never persuade me that in England those powers are in any remarkable degree inferior to what they are in Russia.* However, not having the mantle of legislation to screen me from the ridicule of going beyond my last, I forbear to specify even what I have under my eye, knowing that in Mr. Arthur Young, a gentleman whom no one can accuse of hiding his candle under a bushel, anybody that chooses it might find an informant, who, on this, as well as so many other important subjects, for every grain of information I could give, could give a thousand.

But without any disparagement to that gentleman, for whose public-spirited labours and well-directed talents no man feels greater respect than I do, there are other persons, who on these same subjects could, for such a purpose, give still more and better information than he, and who would not be less communicative: I mean, as before, Mr. Daily Advertiser and his brethren.

There are two points in politics very hard to compass. One is, to persuade legislators that they do not understand shoemaking better than shoemakers; the other is, to persuade shoemakers that they do not understand legislating better than legislators. The latter point is particularly difficult in our own dear country; but the other is the hardest of all hard things everywhere.

LETTER XII.

CONTRACTOR'S CHECKS.

THE point, then, being settled, what trades the people may be employed in, another question my contractor will ask is, what *powers* he is to have put into his hands, as a means of persuading them to betake themselves to those trades? The shortest way of answering this question will be to tell him what powers he shall *not* have. In the first place then, he shall not starve them. "What then," you will say perhaps, "do you think it likely that he would?" To speak the truth, for my own part I have no great fear of it. But others perhaps might. Besides, my notion is, that the law, in guarding itself against men, ought to do just the contrary of what the judge should do in trying them, especially where there is nothing to be lost by it. The business, you know, of the judge, is to presume them all honest till he is forced to suspect the contrary: the business of the law is to conclude them all, without exception, to be the greatest knaves and villains that can be imagined. My contractor, therefore, I make myself sure, would starve them—a good many of them at least—if he were let alone. He would starve, of course, all whom he could not make pay for their board, together with something for his trouble. But as I should get nothing by this economy, and might lose some credit by it, I have no mind it should take place. Bread, though as bad as wholesome bread can be, they shall have,

* One of my brother's boys, who had not been at nail-making a month, got flogged the other day for making a knife: not that at Crecheff there is any law against ingenuity; but there is against stealing iron and stealing time.

then, in plenty: this and water, and nothing else. This they shall be certain of having, and, what is of full as much consequence, every body else that pleases shall be certain of their having it. My brethren of the would-be-reforming tribe may go and look at it at the baker's: they may weigh it, if they will, and buy it, and carry it home, and give it to their children or their pigs. It shall be dealt out by sound of trumpet, if you please; and Christian starers may amuse themselves with seeing bad bread dealt out to felons, as Christian ambassadors are entertained with the sight of bags of bad money counted out to Janissaries. The latter wonder I saw: the other I assure you would give me much more pleasure.

With this saving clause, I deliver them over to the extortioner, and let him make the most of them. Let him sell porter at the price of port: and "humble port" at the price of "imperial tokay:" his customers might grumble, but I don't think you would, and I am sure I should not: for it is for that they were put there. Never fear his being so much his own enemy, as to stand out for a price which nobody will give.

In the next place I don't know that I should be for allowing him the power of beating his boarders, nor, in short, of punishing them in any shape. Anywhere else, such an exemption must have been visionary and impracticable. Without either punishment, or interest given him in the profits of his labour—an interest which, to get the better of so many adverse motives, must have been a pretty strong one, how could you have insured a man's doing a single stroke of work? and, even *with* such interest, how could you have insured his not doing all sorts of mischief? As to mischief, I observed to you, under the article of safe custody, how easy their keeper might make himself upon that score: and as to work, I flatter myself you perceive already, that there need be no great fear of a want of inducements adequate to that purpose.

If, after all, it should be insisted that some power of correction would be absolutely necessary—for instance, in the case of a prisoner's assaulting a keeper or teacher at the time of receiving his food or his instruction (a case which, though never very probable, would be always possible)—such a power, though less necessary here than anywhere else, might, on the other hand, be given with less danger. What tyranny could subsist under such a perfect facility of complaint as is the result of so perfect a facility of inspection? But on this head a word is sufficient, after what I have said in considering the general heads of advantage dependent on this principle. Other checks assistant to this are obvious enough. A *correction-book* might be kept, in which every instance of chastisement, with the cause for which it was administered, might be entered upon record: any the slightest act of punishment not entered to be considered as a lawless injury. If these checks be not enough, the presence of one or more persons, besides him by whom the correction was actually administered, might be required as witnesses of the mode and quantum of correction, and of the alleged cause.

But, besides preventing his starving them or using them ill, there is another thing I should be much inclined to do, in order to make it his interest to take care of them. I would make him pay so much for every one that died, without troubling myself whether any care of his could have kept the man alive. To be sure, he would make me pay for this in the contract; but as I should receive it from him afterwards, what it cost me in the long run would be no great matter. He would get underwriter's profit by me; but let him get that, and welcome.

Suppose three hundred prisoners; and that, out of that number of persons of their ages, ten, that is, one out of thirty, ought to die every year, were they taken at large. But persons of their character and in their condition, it may be expected, will die faster than honest men. Say, therefore, one in twenty, though I believe, as jails stand at present, if no more than one in ten die, or, for aught I know, out of a much smaller number, it may be thought very well. Give the contractor, then, for every man that ought to die, for instance ten pounds: that sum, repeated for every man in twenty among three hundred, will amount to a hundred and fifty pounds. Upon these terms, then, at the end of the year make him pay ten pounds for every man that has actually died within that time; to which you may add, *or escaped*, and I dare say he will have no objection. If by nursing them and making much of them he should find himself at the end of the year a few pounds the richer by his tenderness, who would grudge it him? If you have still any doubt of him, instead of the ten pounds you may put twenty: you will not be much the poorer for it. I don't know, upon second thoughts, whether somewhat of this sort has not been put in practice, or at least proposed, for foundlings. Be that as it may, make but my contractor's allowance large enough, and you need not doubt of his fondness of these his adopted children; of whom whosoever may chance while under his wing to depart this vale of tears, will be sure to leave one sincere mourner at least, without the parade of mourning.

Some perhaps may be for observing, that upon my own principles, this contrivance would be of no use but to save the useless,

tice the contractor, of himself, knows better things than not to take care of a cow that will give milk. But, with their leave, I do not mean that even the useless should be starved; for if the judges had thought this proper, they would have said so.

The patrons of the hard-labour bill, proceeding with that caution and tenderness that pervades their whole system, have denied their *governor*, as they call him, the power of whipping. Some penal power, however, for putting a stop to mischief, was, under their plan, absolutely necessary. They preferred, as the mildest and less dangerous power, that of confining a man in a *dark dungeon under ground*, under a bread-and-water diet. I did then take the liberty to object against the choosing, by way of punishment, the putting of a man into a place which differed not from other places in any essential particular, but that of the chance it stood of proving unwholesome; proposing, at the same time, a very simple expedient, by which their ordinary habitations might be made to receive every other property of a dungeon; in short, the making of them dark.

But in one of my brother's inspection-houses, there the man is in his dungeon already (the only sort of dungeon, at least, which I conceive any man need be in,) very safe and quiet. He is likewise entertaining himself with his bread and water, with only one little circumstance in his favour, that whenever he is tired of that regimen, it is in his own power to put himself under a better: unless my contractor chooses to fine himself for the purpose of punishing his boarder—an act of cruelty which I am in no great dread of.

In short, bating the checks you have seen, and which certainly are not very complicated, the plan of establishment which such a principle of construction seems, now at least, if not for the first time, to render eligible, and which as such I have been venturing to recommend, is exactly upon a par, in point of simplicity, with the forced and temporary expedient of the *ballast-lighters*—a plan that has the most perfect simplicity to recommend it, and, I believe, not much else. The chief differences are, that convicts are not, in the inspection-houses, as in those lighters, jammed together in fetters under a master subject to no inspection, and scarce under any controul, having no interest in their welfare or their work, in a place of *secret* confinement, favourable to infection and to escapes.

LETTER XIII.

MEANS OF EXTRACTING LABOUR.

UNDERSTANDING thus much of his situation, my contractor, I conceive, notwithstanding the checks you have seen, will hardly think it necessary to ask me how he is to manage to persuade his boarders to set to work.—Having them under this regimen, what better security he can wish for of their working, and that to their utmost, I can hardly imagine. At any rate, he has much better security than he can have for the industry and diligence of any ordinary journeyman at large, who is paid by the day, and not by the piece. If a man won't work, nothing has he to do, from morning to night, but to eat his bad bread and drink his water, without a soul to speak to. If he will work, his time is occupied, and he has his meat and his beer, or whatever else his earnings may afford him, and not a stroke does he strike but he gets something, which he would not have got otherwise. This encouragement is necessary to his doing his utmost: but more than this is not necessary. It is necessary every exertion he makes should be sure of its reward; but it is not necessary that such reward be so great, or any thing near so great, as he might have had, had he worked elsewhere. The confinement, which is his punishment, preventing his carrying the work to another market, subjects him to a monopoly; which the contractor, his master, like any other monopolist, makes, of course, as much of as he can. The workman lives in a poor country, where wages are low; but in a poor country, a man who is paid according to his work will exert himself at least as much as in a rich one. According to Mr. Arthur Young, and the very cogent evidence he gives, he should work more: for more work that intelligent traveller finds always done in dear years than in plentiful ones: the earnings of one day affording, in the latter case, a fund for the extravagance of the next. But this is not all. His master may fleece him, if he pleases, at both ends. After sharing in his profits, he may again take a profit upon his expense. He would probably choose to employ both expedients together. The tax upon earnings, if it stood alone, might possibly appear liable to be evaded in some degree, and be frustrated in some cases, by a confederacy between the workmen and their employers out of doors; the tax upon expenditure, by their frugality, supposing that virtue to take root in such a soil; or in some instances, perhaps, by their generosity to their friends without doors. The tax upon earnings would probably not be laid on in an open way, upon any other than the *good* hands; whose traffic must be carried on, with or without his intervention, between them and their out-of-door employers. In the trades which he thought proper to set up of himself for his *capable* hands, his *promising* hands, and his *drones*, the tax might be levied in a more covert way by the lowering of the price paid by him, in comparison of the free prices given out of doors for similar work Where he is

sure of his men, as well with regard to their disposition to spend as with regard to their inability to collude, the tax upon expenditure, without any tax upon profits open or covert, would be the least discouraging: it would be the least discouraging for the present, as the earnings would sound greater to their ears; and with a view to the future, as they would thereby see (I mean such of them as had any hopes of releasement) what their earnings might at that happy period be expected to amount to, in reality as well as in name

LETTER XIV.

PROVISION FOR LIBERATED PERSONS.

The circumstance touched upon at the close of my last letter, suggests another advantage, and that not an inconsiderable one, which you will find more particularly, if not exclusively, connected with the contract plan.

The turning of the prisoners' labour into the most profitable channels being left free, depending upon the joint choice of the two only parties interested in pushing the advantage to the utmost, would afford a resource, and that I should conceive a sure one, for the subsistence of the prisoners, after the expiration of their terms. No trade that could be carried on in this state of thraldom, but could be carried on with at least equal advantage in a state of liberty. Both parties would probably find their account in continuing their manufacturing connexion, after the dissolution of every other. The workman, after the stigma cast on him by the place of his abode, would probably not find it so easy to get employment elsewhere. If he got it at all, it would be upon terms proportioned in some measure to the risk which an employer at large might think he would run on his own part, and in some cases to the danger of driving away fellow-workmen, by the introduction of an associate who might prove more or less unwelcome. He would therefore probably come cheaper to his former master than another man would; at the same time that he would get more from him in his free state than he had been used to get when confined.

Whether this resource was in contemplation with the planners of the hard-labour bill, I cannot pretend to say: I find not upon the face of that bill any proof of the affirmative. It provides a sum for each prisoner, partly for present subsistence, partly as a sort of little capital to be put into his pocket upon his discharge. But the sole measure assigned to this sum is the good behaviour of the party, not the sum required to set him up in whatever might have been his trade. Nor had the choice of his employment been left to the governor of the house, still less to the prisoner, but to committees of justices, as I observed before.

As to the Woolwich Academy, all ideas of reformation under that name, and of a continuance of the like industry as a means of future provision, seem there to have been equally out of the question. That they should hire lighters of their own to heave ballast from, does not appear to have been expected; and if any of them had had the fortune to possess trades of their own before, the scraping of gravel for three, five, or seven years together out of the river, had no particular tendency, that I can see, to rub up the recollection of those trades. The allowance upon discharge would, however, always have its use, though not always the same use. It might help to fit them out for trades; it might serve them to get drunk with; it might serve them to buy any house-breaking implements which they could not so well come at to steal.—The separation between the landlord and his guests must on his side have been rendered the less affecting, by the expectation which he could not but entertain of its proving but a short one. Nor was subsequent provision of one sort or other by any means wanting, for those who failed to find it *there*. The gallows was always ready with open arms to receive as many as the jail-fever should have refused.

LETTER XV.

PROSPECT OF SAVING FROM THIS PLAN.

Many are the data with which a man ought to be furnished (and with not one of which am I furnished) before he pretended to speak upon any tolerable footing of assurance with regard to the advantage that might be expected in the view of pecuniary economy from the inspection plan. *On the one hand*, the average annual amount of the *present* establishments, whatever they are (for I confess I do not know,) for the disposal of convicts: The expected amount of the like average with regard to the measure which I have just learnt has been resolved upon, for sending colonies of them to New South Wales, including as well the maintenance of them till shipped, as the expense of the transportation, and the maintenance of them when they are got there:—*On the other hand*, the capital proposed to have been expended in the *building* and *fitting up* the experimental *penitentiary-house:*——The further capital proposed to have been expended in the *furniture* of it:—The sum proposed to have been allowed per man for the *maintenance* of the prisoners till the time when their labour might be expected to yield a produce. These points and a few others being ascertained, I should then be curious to know what degree of produc-

tiveness, if any, would be looked upon as giving to the measure of a penitentiary-house, either of any construction or of this extraordinary one, the pre-eminence upon the whole over any of the other modes of disposal now in practice or in contemplation. Many distinct points for the eye to rest upon in such a scale will readily occur:—1*st*, The produce might be barely sufficient to pay the expense of *feeding*;—2*d*, It might farther pay the expense of *clothing*;—3*d*, It might farther pay the expense of *guarding* and *instructing*, viz. the salaries or other emoluments of the numerous tribe of visitors, governors, jailors, task-masters, &c. in the one case, and of the contractor and his assistants in the other;—4*th*, It might farther pay the *wear and tear* of the working-stock laid in;—5*th*, It might farther pay the *interest* of the *capital* employed in the purchase of such stock;—6*th*, It might farther pay the interest of the capital laid out in the *erecting* and *fitting* up the establishment in all its parts, at the common rate of interest for money laid out in building;—7*th*, It might farther pay, at the ordinary rate, the *interest* of the money, if any, laid out in the *purchase* of the *ground*. Even at the first mentioned and lowest of these stages, I should be curious to compare the charge of such an institution with that of the least chargeable of those others that are as yet preferred to it. When it had arisen above the last, then, as you see, and not till then, it could be said to yield a profit, in the sense in which the same thing could be said of any manufacturing establishment of a private nature.

But long before that period, the objections of those whose sentiments are the least favourable to such an establishment would, I take for granted, have been perfectly removed. Yet what should make it stop anywhere short of the highest of those stages, or what should prevent it from rising even considerably above the highest of them, is more, I protest, than I can perceive. In what points a manufacturer setting up in such an establishment would be in a *worse* situation than an ordinary manufacturer, I really do not see; but I see many points in which he is in a *better*. His hands, indeed, are all raw, perhaps, at least with relation to the particular species of work which he employs them upon, if not with relation to every other. But so are all hands everywhere, at the first setting up of every manufacture. Look round, and you will find instances enough of manufactures where children, down to four years old, earn something, and where children a few years older earn a subsistence, and that a comfortable one. I must leave to you to mention names and places. You, who have been so much of an English traveller, cannot but have met with instances in plenty, if you have happened to note them down. Many are the instances you must have found in which the part taken by each workman is reduced to some one single operation of such perfect simplicity, that one might defy the awkwardest and most helpless idler that ever existed to avoid succeeding in it. Among the eighteen or twenty operations into which the process of pin-making has been divided, I question whether there is any one that is not reduced to such a state. In this point, then, he is upon at least as good a footing as other manufacturers: but in all other points he is upon a better. What hold can any other manufacturer have upon his workmen, equal to what my manufacturer would have upon his? What other master is there that can reduce his workmen, if idle, to a situation next to starving, without suffering them to go elsewhere? What other master is there, whose men can never get drunk unless he chooses they should do so? and who, so far from being able to raise their wages by combination, are obliged to take whatever pittance he thinks it most for his interest to allow? In all other manufactories, those members of a family who can and will work, must earn enough to maintain not only themselves but those who either cannot or will not work. Each master of a family must earn enough to maintain, or at least help to maintain a wife, and to maintain such as are yet helpless among his children. My manufacturer's workmen, however cramped in other respects, have the good or ill fortune to be freed from this incumbrance—a freedom, the advantage of which will be no secret to their master, who, seeing he is to have the honour of their custom in his capacity of shopkeeper, has taken care to get the measure of their earnings to a hair's-breadth. What other manufacturers are there who reap their profits at the risk of other people, and who have the purse of the nation to support them, in case of any blameless misfortune? And to crown the whole by the great advantage which is the peculiar fruit of this new principle, what other master or manufacturer is there, who to appearance constantly, and in reality as much as he thinks proper, has every look and motion of each workman under his eye? Without any of these advantages, we see manufacturers not only keeping their heads above water, but making their fortunes every day. A manufacturer in this situation *may* certainly fail, because so may he in any other. But the probability is, he would *not* fail: because, even without these great advantages, much fewer fail than thrive, or the wealth of the country could not have gone on increasing as it has done, from the reign of Brutus to the present. And if political establishments were to wait till probability were converted into certainty before trial, *Parliament* might as

well go to bed at once, and sleep on the same pillow with sister *convocation*.

To speak in sober sadness, I do dearly love, as you well know, in human dealings no less than in divine, to think and to say, as far as conscience will allow me, that "whatever is, is right;" as well concerning those things which are done, as concerning those which have been left undone. The gentlemen who gave themselves so much trouble about the penitentiary-house plan, did extremely well; and, for aught I know, the gentlemen who put it under the table at last, may have done still better. If you have a mind to share with me in this comfortable feeling, turn once more to that discarded favourite, and observe what load of expense, some part then necessary, some perhaps not altogether so, it was to have thrown upon the nation; and, at the same time, what will be still more comfortable to you, how great a proportion of that expense would be struck off, by the new and of course still greater favourite, which I have ventured to introduce to you.

In the first place, there was to have been a vast extent of ground; for it was to have had *rope-walks* and *timber-yards*, and it is well it was not to have had dock-yards. Then, for the sake of healthiness, that ground was to have a command of *running water:* then again, for the convenience of dignified inspectors, that ground and that water were to have been in the *vicinity of the metropolis*. It was to have been on the banks of the Thames — somewhere, I think, about Wandsworth and Battersea; and a site fit for I know not how many of the most luxurious villas that fancy could conceive or Christie describe, was to be buried under it. Seven-and-twenty thousand pounds, I think, was the price talked of, and, for aught I know, paid, for the bare ground, before so much as a spade was put in it.* As to my contractor, eighteen or twenty acres of the most unprofitable land your country or any other contains, any waste land, in short, which the crown has already in its possession, would answer every plea he could put in; and out of that he would crib gardens for his own accommodation, and farm-yards, and I know not what besides. As to *running water*, it is indeed to every purpose a very agreeable circumstance, and, under the ordinary jail regimen, a very desirable, possibly an essential one. But many of the Lords and Commons make shift without it, even at their villas, and almost all of them when not at their villas, without ascribing any want of health they may labour under to the want of running water. As to my contractor's boarders, they must have water, indeed, because everybody must have water; but under the provision I have made for turning the operations of cleanliness into *motions of course*, I should apprehend their condition might still be tolerable, should they have no other running stock of that necessary element than what falls to the share of better men.

When the ground thus dearly wrung from the grasp of luxury came to be covered, think what another source of expense was to be opened, when, over and above nine hundred roomy chambers for so many persons to *lie* in, three other different classes of apartments were to be provided, to I know not what number nor extent, for them to *work* in, to *pray* in, and to *suffer* in!—four operations, the scenes of which are, upon our plan, consolidated into one.

I need not add much to what I have said in a former letter, about the tribe of subordinate establishments, each of them singly an object of no mean expense, which it seems to have been in contemplation to inclose within the fortress: I mean the mills, the forges, the engines, the timber-yards, and the rope-walks. The seal which stamps my contract dispels, as if it were a talisman, this great town in *nubibus;* and two or three plain round houses take its place. Either I am much mistaken, or a sum not much exceeding what was paid or destined for the bare ground of the proposed penitentiary-houses, would build and completely fit up those round houses, besides paying for the ground.

To this account of the *dead* stock is to be added, if I may say it without offence, that of the *live* stock of inspectors, of every rank and denomination: I mean the pyramid of under-keepers, and task-masters, and store-keepers, and governors, and committees of magistrates, which it builds up, all to be paid up and salaried, with allowances rising in proportion to the rise of dignity: the whole to be crowned with a grand triumvirate of superintendents, two of whom were to have been members of parliament, men of high birth and quality, whose toilsome dignity a minister would hardly have affronted by the offer of salaries much inferior to what are to be found annexed to sinecures.

I will not say much of the "other officers," without number, which I see, by my *View of the Hard-labour Bill*, were to have been added, and of course must have been added, in such number as the "committees" of your * * * * to whom this business was then committed, or at any rate some other good judges should have judged "necessary."

Officers and governors, *eo nomine*, my contractor would have none: and any superfluous clerk or over-looker, who might be found lurking in his establishment, he would have much less tenderness for, than your gardener

* I do not recollect from what source I took this idea of the sum. I now understand it to have been no more than five thousand pounds.

has for the sow-thistles in your garden. The greatest part of *his* science comes to *him* in maxims from his grand-mother; and amongst the foremost of those maxims is that which stigmatizes as an unfrugal practice, the keeping of more cats than will catch mice.

If, under all these circumstances, the penitentiary-houses should have been somewhat of a bugbear, it will be the less to be wondered at, when one considers the magnitude of the scale upon which this complicated experiment was going to be made. I mentioned in round numbers nine hundred as the number of convicts which was going to be provided for; but 888 was the exact number mentioned in the bill. Three eights, "thus arranged, a terrible show!" But granting this to be the number likely to require provision of some kind or other, it surely does not follow that all that require it must necessarily be provided for in this manner, or in none. If the eight hundred and eighty eight appear so formidable, gentlemen may strike off the hundreds, and try whether the country will be ruined by an establishment inferior to that which an obscure ex-countryman of theirs is going to amuse himself with.

What I have all along been taking for granted is, that it is the mere dread of extravagance that has *driven* your thrifty minister from the penitentiary-house plan — not the love of transportation that has *seduced* him from it. The inferiority of the latter mode of punishment in point of exemplarity and equality — in short, in every point but that of expense, stands, I believe, undisputed. I collected the reasons against it, that were in every body's mouth, and marked them down, with, I think, some additions (as you may or may not remember) in my view of the hard-labour bill, supplement included. I have never happened to hear any objections made to those reasons; nor have I heard of any charms, other than those of antiquity and comparative frugality, that transportation has to recommend it. Supposing, therefore, what I most certainly do not suppose, that my contractor could not keep his people at home at *less* expense than it would take to send them abroad, yet if he could keep them at no *greater* expense, I should presume that even this would be reckoned no small point gained, and that even this very moderate success would be sufficient to put an end to so undesirable a branch of navigation.

Nor does any preference that might be given to the transportation plan, supersede the necessity of this or some other substitute to it, in the many cases to which it cannot be conceived that plan should be extended. Transportation to this desert for seven years— a punishment which under such circumstances is so much like transportation for life—is not, I suppose, to be inflicted for every peccadillo. Vessels will not be sailing every week or fortnight upon this four or five or six months navigation: hardly much oftener, I should suppose, than once a twelvemonth. In the meantime, the convicts must be somewhere: and whether they are likely to be better qualified for colonization by lounging in an ordinary jail, or rotting on board a ballast hulk, or working in an inspection-house, may now, I think, be left for any one to judge.

LETTER XVI.

HOUSES OF CORRECTION.

In considering my brotner's inspection plan as applicable to the purpose of establishments designed to force labour, my principal theme has hitherto been the national establishment of *penitentiary-houses*. My first design, however, was to help to drive the nail I saw a-going: I mean the *house of correction*, which the advertisement informed me was under consideration for your * * * *. I had little notion, at the outset, of attempting any such up-hill work as the heaving up again that huge stone, the *penitentiary-house*, which the builders at last had refused, and which, after the toiling and straining of so many years, had tumbled to the bottom. But the greater object grew upon me as I wrote; and what I found to say on that subject I grudged the less, as thinking it might, most of it, be more or less applicable to your establishment. How far, and in what particular respects, it may prove so, I have no means of knowing: I trouble you with it at a venture. In my last I proposed, if the nation were poor and fearful, a penitentiary-house upon a very small scale — so small, if such caution were thought necessary, as not to contain so many as a hundred prisoners. But however poor the nation may be, the * * * * * of * * * * surely is rich. What then should hinder your * * * * * from standing forth and setting the nation an example? What the number of persons you may have to provide for in this way is supposed to be, I have no means of knowing; but I should think it strange if it did not considerably exceed the one just mentioned. What it is you will risk by such an experiment, is more than I can see. As far as the building is concerned, it is a question which architects, and they alone, can answer. In the meantime, we who know nothing of the matter, can find no reason, all things considered, why a building upon this plan should cost more than upon another. But setting aside the building, every other difference is on the profitable side.

The precautions against escapes, and the restraints destined to answer the ends of punishment, would not, I suppose, in your establishment be quite so strict, as it would be

necessary they should be in an establishment designed to answer the purpose of a penitentiary-house. Bars, bolts, and gratings, would in this of your's, I suppose, be rejected; and the inexorable *partition walls* might for some purposes be thinned away to boards or canvass, and for others thrown out altogether. With you, the gloomy paradox of crowded solitude might be exchanged, perhaps, for the cheerfulness of a common refectory. The Sabbath might be a Sabbath there as elsewhere. In the penitentiary inspection-house, the prisoners were to lie, as they were to eat, to work, to pray, and to do every thing, in their cells, and nowhere else. In your house of correction, where they should lie, or how they should lie, I stay not to inquire.

It is well, however, for you * * * * gentlemen, that you are so rich; for in point of frugality, I could not venture to promise you anything like the success that I would to "poor old England." Your contractor's jail-birds, if you had a contractor, would be perpetually upon the wing: the short terms you would be sending them to him for, would seldom admit of their attaining to such a proficiency, as to make a profit upon any branch of industry. In general, what in a former letter I termed the *good* hands, would be his chief, if not his whole dependence; and that, I doubt, but a scanty one.

I will not pester you with further niceties applicable to the difference between *houses of correction*, and *work-houses*, and *poor-houses*, if any there should be, which are not work-houses; between the different modes of treatment that may be due to what are looked upon as the inferior degrees of *dishonesty*, to *idleness* as yet untainted with dishonesty, and to blameless *indigence*. The law herself has scarcely eyes for these microscopic differences. I bow down, therefore, for the present at least, to the counsel of so many sages, and shrink from the crime of being "wiser than the law."

LETTER XVII.

PRISONS FOR SAFE CUSTODY MERELY.

A WORD or two respecting the condition of *offenders before conviction:* or, if that expression should appear to include a solecism, of persons accused, who either for want of bail, or as charged with offences not bailable, have hitherto been made, through negligence or necessity, to share by anticipation so much of the fate of convicts, as imprisonment more or less rigid may amount to.

To persons thus circumstanced, the inspection principle would apply, as far as *safe custody* was concerned, with as much advantage as to convicts. But as there can be no ground for punishing them any otherwise than in so far as the *restraint* necessary for safe custody has the effect of punishment, there can be as little ground for subjecting them to *solitude;* unless where that circumstance should also appear necessary, either to safe custody, or to prevent that mental infection, which novices in the arts of dishonesty, and in debauchery, the parent of dishonesty, are so much in danger of contracting from the masters of those arts. In this view, therefore, the *partitions* might appear to some an unnecessary ingredient in the composition of the building; though I confess, from the consideration just alleged, they would not appear in that light to me. Communication must likewise be allowed to the prisoners with their friends and legal assistants, for the purpose of settling their affairs, and concerting their defence.

As forced labour is punishment, labour must not here be forced. For the same reason, and because the privation of such comforts of any kind as a man's circumstances allow him, is also punishment, neither should the free admission of such comforts, as far as is consistent with sobriety, be denied; nor, if the keeper is permitted to concern himself in any part of the trade, should he be permitted to make a greater profit than would be made by other traders.

But amongst persons of such description, and in such a multitude, there will always be a certain number, nor that probably an inconsiderable one, who will possess no means of subsistence whatever of their own. These then will, in so far, come under a predicament not very dissimilar to that of convicts in a penitentiary-house. Whatever works they may be capable of, there is no reason why subsistence should be given to them, any more than to persons free from suspicion and at large, but as the price for work, supposing them able to perform it. But as this ability is a fact, the judgment of which is a matter of great nicety, too much it may be thought by far to be entrusted to such hands, if to any, some allowance must therefore be made them *gratis*, and that at least as good a one as I recommended for the penitentiary-house. In order to supply the defects of this allowance, the point then will be, to provide some sort of work for such, who not having trades of their own which they can work at, are yet willing to take work, if they can get it. If to find such work might be difficult, even in a house of correction, on account of the shortness of the time which there may be for learning work, for the same reason it should be still more difficult in a prison appropriated to safe custody before conviction, at least in cases where, as it will sometimes happen, the commitment precedes the trial but a few days. If on the ground of being particularly likely to have it in his power to

provide work, the contracting keeper of a penitentiary-house should be deemed the fittest person for the keeping of a *safe-custody house* (for so I would wish to call it, rather than a prison,) in other respects he might be thought less fit, rather than more so. In a penitentiary-house, he is an extortioner by trade: a trade he must wholly learn, every time he sets his foot in a safe-custody house, on pain of such punishment as unlicensed extortioners may deserve. But it by no means follows, because the keeper of a penitentiary-house has found one, or perhaps half-a-dozen sorts of work, any of which a person may make himself tolerably master of in the course of a few months, that he should be in possession of any that might be performed without learning, or learnt in a few days. If, therefore, for frugality's sake, or any other convenience, any other establishments were taken to combine with that of a safe-custody house, a house of correction would seem better suited to such a purpose, than a penitentiary-house. But without considering it as matter of necessity to have recourse to such shifts, the eligibility of which might depend upon local and other particular considerations, I should hope that employments would not be wanting, and those capable of affording a moderately good subsistence, for which a man of ordinary faculties would be as well qualified the first instant, as at the end of seven years. I could almost venture to mention examples, but that the reasons so often given stop my pen.

LETTER XVIII.

MANUFACTORIES.

After so much as has been said on the application of our principle to the business of manufactories, considered as carried on by forced labour, you will think a very few words more than sufficient, in the view of applying it to manufactories carried on upon the ordinary plan of freedom.

The centrality of the presiding person's situation will have its use at all events; for the purpose of direction and order at least, if for no other. The concealment of his person will be of use, in as far as controul may be judged useful. As to partitions, whether they would be more serviceable in the way of preventing distraction, or disserviceable by impeding communication, will depend upon the particular nature of the particular manufacture. In some manufactories they will have a further use, by the convenience they may afford for ranging a greater number of tools than could otherwise be stowed within the workman's reach. In nice businesses, such as that of watch-making, where considerable damage might result from an accidental jog or a momentary distraction, such partitions, I understand, are usual.

Whatever be the manufacture, the utility of the principle is obvious and incontestible, in all cases where the workmen are paid according to their *time*. Where they are paid by the *piece*, there the interest which the workman has in the value of his work supersedes the use of coercion, and of every expedient calculated to give force to it. In this case, I see no other use to be made of the inspection principle, than in as far as instruction may be wanted, or in the view of preventing any waste or other damage, which would not of itself come home to the workman, in the way of diminishing his earnings, or in any other shape.

Were a manufactory of any kind to be established upon this principle, the *central lodge* would probably be made use of as the compting-house: and if more branches than one were carried on under the same roof, the accounts belonging to each branch would be kept in the corresponding parts of the lodge. The lodge would also serve as a sort of temporary store-room, into which the tools and materials would be brought from the work-houses, and from whence they would be delivered out to the workmen all around, as well as finished work received, as occasion might require.

LETTER XIX.

MAD-HOUSES.

I come now with pleasure, notwithstanding the sadness of the subject, to an instance in which the application of the principle will be of the lenient cast altogether: I mean, that of the melancholy abodes appropriated to the reception of the insane. And here, perhaps, a noble lord now in administration might find some little assistance lent to the humane and salutary regulations for which we are chiefly indebted to his care.*

That any of the receptacles at present subsisting should be pulled down only to make room for others on the inspection principle, is neither to be expected nor to be wished. But, should any buildings that may be erected in future for this purpose be made to receive the inspection form, the object of such institutions could scarce fail of receiving some share of its salutary influence. The powers of the insane, as well as those of the wicked, are capable of being directed either against their fellow-creatures or against themselves. If in the latter case nothing less than perpetual chains should be availing, yet in all instances where only the former danger is to be

* Lord Sydney; who in the House of Commons brought in the bill for the regulation of mad-houses, which afterwards passed into an act.

apprehended, separate cells, exposed, as in the case of prisons, to inspection, would render the use of chains and other modes of corporal sufferance as unnecessary in this case as in any. And with regard to the conduct of the keepers, and the need which the patients have to be kept, the natural, and not discommendable jealousy of abuse would, in this instance as in the former ones, find a much readier satisfaction than it could anywhere at present.

But without thinking of erecting mad-houses on purpose, if we ask Mr. Howard, he will tell us, if I do not misrecollect, that there are few prisons or work-houses but what are applied occasionally to this use. Indeed, a receptacle of one or other of these descriptions is the ready, and, I believe, the only resource, which magistrates find vested in their hands. Hence it was, he so often found his senses assailed with that strange and unseemly mixture of calamity and guilt —lunatics raving and felons rioting in the same room. But in every penal inspection-house, every vacant cell would afford these afflicted beings an apartment exempt from disturbance, and adapted to their wants.

LETTER XX.

HOSPITALS.

If any thing could still be wanting to show how far this plan is from any necessary connexion with severe and coercive measures, there cannot be a stronger consideration than that of the advantage with which it applies to *hospitals;* establishments of which the sole object is the relief of the afflicted, whom their own entreaties have introduced. Tenacious as ever of the principle of *omnipresence*, I take it for granted that the whole tribe of medical curators—the *surgeon*, the *apothecary*, the *matron*, to whom I could wish to add even the *physician*, could the establishment be but sufficient to make it worth his while, find in the inspection-lodge and what apartments might be added above it, their constant residence. Here the physician and the apothecary might know with certainty that the prescription which the one had ordered and the other made up, had been administered at the exact time and in the exact manner in which it was ordered to be administered. Here the surgeon would be sure that his instructions and directions had been followed in all points by his pupils and assistants. Here the faculty, in all its branches, might with the least trouble possible watch as much as they chose to watch, of the progress of the disease, and the influence of the remedy. Complaints from the sick might be received the instant the cause of the complaint, real or imaginary, occurred; though, as misconduct would be followed by instant reprehension, such complaints must be proportionably rare.

The separation of the cells might be in part, continued either for comfort or for decency. Curtains, instead of grating, would give the patients, when they thought fit, the option of being seen. Partitions of greater solidity and extent might divide the fabric into different wards, confining infection, adapting themselves to the varieties of disease, and affording, upon occasion, diversities of temperature.

In hot weather, to save the room from being heated, and the patients from being incommoded by the sun, *shades* or awnings might secure the windows towards the south.

I do not mean to entertain you here with a system of physic, or a treatise upon *airs*. But a word or two on this subject you must permit me. Would the ceilings of the cell be high enough? Is the plan of construction sufficiently favourable to ventilation? I have not the good fortune to have read a book published not long ago on the subject of hospitals, by our countryman Mr. Aikin, though I remember seeing some account of it in a review. But I cannot help begging of you to recommend to the notice of your medical friends, the perusal of Dr. De Maret's paper, in the *Memoirs of the Academy of Dijon* for the year 1782. If either his facts or his reasoning are to be trusted, not only no loftiness of ceiling is sufficient to ensure to such a building a purity of air, but it may appear questionable whether such an effect be upon the whole promoted by that circumstance.*

His great anxiety seems to be, that at some known period or periods of the day, the whole mass of air may undergo at once a total change, not trusting to partial and precarious evacuations by opening here and there a window; still less to any height or other amplitude of room—a circumstance which of itself tends to render them still more partial and precarious. Proscribing all rectilinear walls and flat ceilings forming angles at the junctions, he recommends accordingly for the inside of his building, the form of a long oval, curved in every direction except that of the floor, placing a door at each end. By throwing open these doors, he seems to make it pretty apparent, that the smallest draught will be sufficient to effect an entire change in the whole stock of air; since at which ever end a current of air happens first to enter, it will carry all before it till it gets to the other

* To an hospital lately built at Lyons, a vast dome had been given in this view. It had been expected that the foul air should be found at top, while that near the floor should have been sweet and wholesome. On the contrary, substances which turned putrid at the bottom in a single day, remained sweet above at the end of five days.

Opening windows, or other apertures, disposed in any other part of the room, would tend rather to disturb and counteract the current, than to promote it.

From the same reasoning it will follow, that the *circular* form demanded as the best of all by the inspection principle, must, in a view to ventilation, have in a considerable degree the advantage over *rectilinear;* and even, were the difference sufficiently material, the inspection principle might be applied to his oval with little or no disadvantage. The form of the inspection lodge might in this case follow that of the containing building; and that central part, so far from obstructing the ventilation, would rather, as it should seem, assist it, increasing the force of the current by the compressure.

It should seem also, that to a circular building, the central lodge would thus give the same aptitude to ventilation, which the Doctor's oval form possesses of itself.

To save his patients from catching cold while the current is passing through the room, the Doctor allows to each a short *screen*, like the head of a cradle, to be rested on the bed.

Here the use of the tin *speaking-tubes* would be seen again, in the means they would afford to the patient, though he were equal to no more than a whisper, of conveying to the lodge the most immediate notice of his wants, and receiving answers in a tone equally unproductive of disturbance.

Something I could have wished to say on the important difference between the general and comparatively immaterial impurity resulting merely from the *phlogiston*, and the various particular impurities constituted by the various products of *putrefaction*, or by the different matters of the various *contagions.* Against these very different dangers, the mode and measure of precaution might admit of no small difference. But this belongs not necessarily to the subject, and you would not thank me, any more than gentlemen of the faculty who understand it better than I, or gentlemen at large who would not wish to understand it.

An hospital built and conducted upon a plan of this kind, of the success of which everybody might be an observer, accessible to the patients' friends, who, without incommoding or being incommoded, might see the whole economy of it carried on under their eye, would lose, it is to be hoped, a great part of those repelling terrors, which deprive of the benefit of such institutions many objects whom prejudice, in league with poverty, either debars altogether from relief, or drives to seek it in much less eligible shapes. Who knows but that the certainty of a medical attendance, not occasional, short-lived, or even precarious, as at present, but constant and uninterrupted, might not render such a situation preferable even to home, in the eyes of many persons who could afford to pay for it? and that the erection of a building of this kind might turn to account in the hands of some enterprising practitioner?

A *prison*, as I observed in a former letter, includes an hospital. In prisons on this construction, every cell may receive the properties of an hospital, without undergoing any change. The whole prison would be perhaps a better hospital than any building known hitherto by that name. Yet should it be thought of use, a few cells might be appropriated to that purpose; and perhaps it may be thought advisable that some cases of infection should be thrown out, and lodged under another roof.

But if infection in general must be sent to be *cured* elsewhere, there is no spot in which infection originating in negligence can, either in the *rise* or *spread* of it, meet with such obstacles as here. In what other instance as in this, will you see the interests of the governor and the governed in this important particular, so perfectly confounded and made one? — those of the keeper with those of the prisoners—those of the medical curator with those of the patients? Clean or unclean, safe or unsafe, he runs the chance that they do: if he lets them poison themselves, he lets them poison *him.* Encompassed on all sides by a multitude of persons, whose good or bad condition depends upon himself, he stands as a hostage in his own hands for the salubrity of the whole.

LETTER XXI.

SCHOOLS.

AFTER applying the inspection principle first to prisons, and through mad-houses bringing it down to hospitals, will the parental feelings endure my applying it at last to schools? Will the observation of its efficacy in preventing the irregular application of undue hardship even to the guilty, be sufficient to dispel the apprehension of its tendency to introduce tyranny into the abodes of innocence and youth?

Applied to these, you will find it capable of two very distinguishable degrees of extension: — It may be confined to the hours of study; or it may be made to fill the whole circle of time, including the hours of repose, and refreshment, and recreation.

To the first of these applications the most captious timidity, I think, could hardly fancy an objection: concerning the hours of study, there can, I think, be but one wish, that they should be employed in study. It is scarce necessary to observe that gratings, bars, and bolts, and every circumstance from which an inspection-house can derive a terrific charac-

ter, have nothing to do here. All play, all chattering — in short, all distraction of every kind, is effectually banished by the central and covered situation of the master, seconded by partitions or screens between the scholars, as slight as you please. The different measures and casts of talent, by this means rendered, perhaps for the first time, distinctly discernible, will indicate the different degrees of attention and modes of culture most suitable to each particular disposition; and incurable and irreproachable dulness or imbecility will no longer be punished for the sins of idleness or obstinacy. That species of fraud at Westminster called *cribbing*, a vice thought hitherto congenial to schools, will never creep in here. That system of premature corruption, in which idleness is screened by opulence, and the honour due to talents or industry is let out for hire, will be completely done away; and a nobleman may stand as good a chance of knowing something as a common man.

Nor, in point of present enjoyment, will the scholars be losers by the change. Those sinkings of the heart at the thoughts of a task undone, those galling struggles between the passion for play and the fear of punishment, would there be unknown. During the hours of business, habit, no longer broken in upon by accident, would strip the master's presence of its terrors, without depriving it of its use. And the time allotted for study being faithfully and rigidly appropriated to that service, the less of it would serve.

The separate spaces allotted for this purpose would not in other respects be thrown away. A bed, a bureau, and a chair, must be had at any rate; so that the only extraordinary expense in building would be for the *partitions*, for which a very slight thickness would suffice. The youth of either sex might by this means sleep, as well as study, under inspection, and alone — a circumstance of no mean importance in many a parent's eye.

In the Royal Military School at Paris, the bed-chambers (if my brother's memory does not deceive him) form two ranges on the two sides of a long room; the inhabitants being separated from one another by *partitions*, but exposed alike to the view of a master at his walks, by a kind of a *grated window* in each door. This plan of construction struck him, he tells me, a good deal, as he walked over that establishment (about a dozen years ago, was it not?) with you; and possibly in that walk the foundation was laid for his Inspection-House. If he there borrowed his idea, I hope he has not repaid it without interest. You will confess some difference, in point of facility, betwixt a state of incessant walking and a state of rest; and in point of completeness of inspection, between visiting two or three hundred persons one after another, and seeing them at once.

In stating what this principle *will* do in promoting the progress of instruction in every line, a word or two will be thought sufficient to state what it will *not* do. It *does* give every degree of efficacy which can be given to the influence of *punishment* and *restraint*. But it does nothing towards correcting the oppressive influence of punishment and restraint, by the enlivening and invigorating influence of *reward*. That noblest and brightest engine of discipline can by no other means be put to constant use in schools, than by the practice which at Westminster, you know, goes by the name of *challenging* — an institution which, paying merit in its fittest and most inexhaustible coin, and even uniting in one impulse the opposite powers of reward and punishment, holds out dishonour for every attention a boy omits, and honour for every exertion he can bestow.

With regard to the extending the range of inspection over every moment of a boy's time, the sentiments of mankind might not be altogether so unanimous. The notion, indeed, of most parents is, I believe, that children cannot be too much under the master's eye; and if man were a consistent animal, none who entertain that notion but should be fonder of the principle the farther they saw it pursued. But as consistency is of all human qualities the most rare, it need not at all surprise us, if, of those who in the present state of things are most anxious on the head of the master's omnipresence, many were to fly back and change their note, when they saw that point screwed up at once to a pitch of perfection so much beyond whatever they could have been accustomed to conceive.

Some there are, at any rate, who, before they came into so novel a scheme, would have many scruples to get over. Doubts would be started — Whether it would be advisable to apply such constant and unremitting pressure to the tender mind, and to give such herculean and ineludible strength to the gripe of power? — whether persons, of the cast of character and extent of ideas that may be expected to be found in the common run of schoolmasters, are likely to be fit receptacles for an authority so much exceeding anything that has been hitherto signified by *despotic?* — whether the *in*-attention of the master may not be as necessary to the *present* comfort of his *pupil*, in some respects, as the attention of the one may be to the *future* welfare of the other, in other respects? — whether the irretrievable check given to the free development of the intellectual part of his frame by this unintermitted pressure, may not be productive of an imbecility similar to that which would be produced by constant and long-continued *bandages* on the corporeal part? — whether what is thus acquired in *regularity* may not be lost in *energy?* — whether that

not less instructive, though less heeded, course of discipline, which in the struggles of passion against passion, and of reason against reason, is administered by the children to one another and to themselves, and in which the conflicts and competitions that are to form the business of maturity are rehearsed in miniature; whether I say, this moral and most important branch of instruction would not by these means be sacrificed to the rudiments, and those seldom the most useful, of the intellectual?—whether the defects, with which *private* education has been charged in its comparison with public, would not here be carried to the extreme?—and whether, in being made a little better acquainted with the world of abstraction than they might have been otherwise, the youth thus pent up may not have been kept more than proportionably ignorant of the world of realities into which they are about to launch?—whether the liberal spirit and energy of a free citizen would not be exchanged for the mechanical discipline of a soldier, or the austerity of a monk?—and whether the result of this high-wrought contrivance might not be constructing a set of *machines* under the similitude of *men?*

To give a satisfactory answer to all these queries, which are mighty fine, but do not any of them come home to the point, it would be necessary to recur at once to the end of education. Would *happiness* be most likely to be increased or diminished by this discipline?—Call them soldiers, call them monks, call them machines: so they were but happy ones, I should not care. Wars and storms are best to read of, but peace and calms are better to enjoy. Don't be frightened now, my dear *****, and think that I am going to entertain you with a course of moral philosophy, or even with a system of education. Happiness is a very pretty thing to feel, but very dry to talk about; so you may unknit your brow, for I shall say no more about the matter. One thing only I will add, which is, that whoever sets up an inspection-school upon the tiptop of the principle, had need to be very sure of the master; for the boy's body is not more the child of his father's, than his mind will be of the master's mind; with no other difference than what there is between *command* on one side and *subjection* on the other.

Some of these fine queries which I have been treating you with, and finer still, Rousseau would have entertained us with; nor do I imagine he would have put his *Emilius* into an inspection-house; but I think he would have been glad of such a school for his Sophia.

Addison, the grave and moral Addison, in his *Spectator* or his *Tatler*, I forget which, suggests a contrivance for trying *virginity* by means of *lions*. You may there find many curious disquisitions concerning the measures and degrees of that species of purity; all which you will be better pleased to have from that grave author than from me. But, without plunging into any such discussions, the highest degree possible, whatsoever that may be, is no more than anybody might make sure of, only by transferring damsels at as early an age as may be thought sufficient, into a strict inspection-school. Addison's scheme was not only a penal but a bloody one: and what havoc it might have made in the population of the country, I tremble but to think of. Give thanks, then, to *Diana* and the *eleven thousand virgins*, and to whatever powers preside over virginity in either *calendar*, for so happy a discovery as this of your friend's. There you saw blood and uncertainty: here you see certainty without blood. What advantage might be made by setting up a boarding-school for young ladies upon this plan, and with what eagerness gentlemen who are curious in such matters would crowd to such a school to choose themselves wives, is too obvious to insist on. The only inconvenience I can think of is, that if the institution were to become general, Mrs. Ch. H. and other gentlewomen of her calling, would be obliged either to give up house-keeping, or take up with low wenches or married ladies.

Dr. Brown the estimator would have been stark mad for an inspection-school upon the very extremity of the principle, provided always he were to have been head-master, and then he would have had no other schools but those. His antagonist, Dr. Priestly, would, I imagine, be altogether as averse to it, unless, perhaps, for experiment's sake, upon a small scale, just enough to furnish an appendix to *Hartley upon Man*.

You have a controversy, I find, in England, about *Sunday-schools*. Schools upon the extremity of the inspection-principle would, I am apt to think, find more advocates among the patrons than among the oppugners of that measure.

We are told, somewhere or other, of a King of Egypt (*Psammitichus*, I think, is his name) who thinking to re-discover the lost original of language, contrived to breed up two children in a sequestered spot, secluded, from the hour of their birth, from all converse with the rest of humankind. No great matters were, I believe, collected from this experiment. An inspection-house, to which a set of children had been consigned from their birth, might afford experiments enough that would be rather more interesting. What say you to a *foundling-hospital* upon this principle? Would ****'s *manes* give you leave to let your present school and build another upon this ground? If I do not misrecollect, your brethren in that trust have gone so far as to make a point, where it can be effected, of taking the children out of the

hands of their parents as much as possible, and even, if possible, altogether. If you have gone thus far, you have passed the Rubicon; you may even clap them up in an inspection-house, and then you make of them what you please. You need never grudge the parents *a peep behind the curtain* in the master's lodge. There, as often as they had a mind, they might see their children thriving and learning, if that would satisfy them, without interrupting business or counteracting discipline. Improving upon Psammitichus's experiment, you might keep up a sixteen or eighteen years separation between the male and female part of your young subjects; and at the end of that period see what the language of love would be, when *Father Francis's Ganders* were turned into *Father Francis's Geese.*

I know who would have been delighted to set up an inspection-school, if it were only for the experiment's sake, and that is Helvetius: at least, if he had been steady to his principles, which he was said to be: for by that contrivance, and by that alone, he might have been enabled to give an experimental proof of the truth of his position (supposing it to be true) that anybody may be taught anything, one person as well as another. It would have been his fault, if what he requires as a condition, viz. that the subjects of the experiment be placed in circumstances exactly similar, were not fulfilled.

A rare field for discovery in *metaphysics:* a science which, now for the first time, may be put to the test of experiment, like any other. Books, conversation, sensible objects, everything, might be *given.* The genealogy of each observable idea might be traced through all its degrees with the utmost nicety: the parent stocks being all known and numbered. Party men, controversialists of every description, and all other such epicures, whose mouth waters at the mammon of power, might here give themselves a rich treat, adapted to their several tastes, unembittered by contradiction. Two and two might here be less than four, or the moon might be made of green cheese; if any pious founder, who were rich enough, chose to have her of that material. Surrounded by a circle of pupils, obsequious beyond anything as yet known under the name of obsequiousness, their happiness might in such a mansion be complete, if any moderate number of adherents could content them; which unhappily is not the case. At the end of some twenty or five-and-twenty years, introduce the scholars of the different schools to one another (observing first to tie their hands behind them) and you will see good sport; though perhaps you may think there is enough of that kind of sport already. But if you throw out this hint to anybody, you will take care, as far as sects and religions are concerned, not to mention names; for of these, how few are there but would be ready to pull us to pieces, if they saw their rivals set down upon the same line, as candidates for the same advantage? And this is what we should get by our impartiality.— You may, however, venture to hint, that the money which is now laid out for propagating controversy, by founding sermons and lectures, might be laid out with greater certainty of advantage in the founding *controversial inspection-schools.* The preachers must be sad bunglers, indeed, if they had not there as many adherents as auditors; which is not always the case in the world at large. As to flagellation, and other such ceremonies, which more through custom than necessity are used by way of punishment in schools, but which under some institutions form the *routine* of life, I need not take up your time in showing how much the punctuality of those transactions might, in the latter case, be improved by the inspection principle. These monastic accomplishments have not been in fashion in our country for some ages:—therefore it would be lost labour to recommend the principle in that view. Neither are they a whit more so where I write; so that I should get as little thanks for my pains, were I to make such a proposal here. On the contrary, we are dissolving monasteries as you would lumps of sugar. A lump, for instance, we got the other day at Kieff, enough to feed a brace of regiments, besides pickings for other people. But if in my return to England, or at any other time, I should happen to go by the monastery of *La Trappe*, or any other where they are in earnest about such business, it would be cruelty to deny them the assistance it might be made to receive from the inspection principle. *Flinching* would then be as impracticable in a monastery, as *cribbing* in a school. Old scores might thus be rubbed out with as much regularity as could be desired; nor would the pride of *Toboso* have been so long a-disenchanting, could her *Knight* have put his coward *Squire* into an inspection-house.

Neither do I mean to give any instructions to the *Turks* for applying the inspection principle to their *seraglios:* no, not though I were to go through Constantinople again twenty times, notwithstanding the great saving it would make in the article of *eunuchs*, of whom one trusty one in the inspection-lodge would be as good as half a hundred. The price of that kind of cattle could not fail of falling at least ten per cent., and the insurance upon marital honour at least as much, upon the bare hint given of such an establishment in any of the Constantinople papers. But the mobbing I got at *Shoomlo*, only for taking a peep at the town from a thing they call a *minaret* (like our monument) in pursuance of invitation, has cancelled any claims

they might have had upon me for the dinner they gave me at the *divan*, had it been better than it was.

If the idea of some of these applications should have brought a smile upon your countenance, it won't hurt you, my dear ****; nor should it hurt the principle. Your candour will prevent you from condemning a great and new invented instrument of government, because some of the purposes to which it is possible to apply it may appear useless, or trifling, or mischievous, or ridiculous. Its great excellence consists in the great strength it is capable of giving to *any* institution it may be thought proper to apply it to. If any perverse applications should ever be made of it, they will lie in this case as in others, at the doors of those who make them. Knives, however sharp, are very useful things, and, for most purposes, the sharper the more useful. I have no fear, therefore, of your wishing to forbid the use of them, because they have been sometimes employed by school-boys *to raise the devil* with, or by assassins to cut throats with.

I hope no critic of more learning than candour will do an inspection-house so much injustice as to compare it to *Dionysius' ear*. The object of that contrivance was, to know what prisoners said without their suspecting any such thing. The object of the inspection principle is directly the reverse: it is to make them not only *suspect*, but be *assured*, that whatever they do is known, even though that should not be the case. Detection is the object of the first: *prevention*, that of the latter. In the former case the ruling person is a spy; in the latter he is a monitor. The object of the first was to pry into the secret recesses of the heart; the latter, confining its attention to *overt* acts, leaves thoughts and fancies to their proper *ordinary*, the court *above*.

When I consider the extensive variety of purposes to which this principle may be applied, and the certain efficacy which, as far as I can trust my own conceptions, it promises to them all, my wonder is, not only that this plan should never have hitherto been put in practice, but how any other should ever have been thought of.

In so many edifices, as, from the time of the conquest to the present, have been built for the express purpose of safe custody, does it sound natural that, instead of placing the prisoners under the inspection of their keepers, the one class should have been lodged at one end, perhaps, of a vast building, and the other at another end?—as if the object of the establishment were, that those who wished to escape might carry on their schemes in concert, and at leisure. I should suppose the inspection principle must long ago have occurred to the ingenious, and been rejected by the judicious, could I, after all my efforts, conceive a reason for the rejection. The circular form, notwithstanding its taking demonstrably less materials than any other, may, for aught I know, on its first construction, be more expensive than one of equal dimensions in any of the ordinary forms. But this objection, which has no other source than the loose and random surmise of one who has had no experience in building, can never have held good in comparison with all the other prisons that we have, if in truth it holds good in comparison with any. Witness the massy piles of Newgate, of which the enormous, and upon the common plans by no means unnecessary expense, has been laid out in the purchase of a degree of security, not equal to that which the circular form would have given to the slightest building that could be made to hold together. In short, as often as I indulge myself in the liberty of fancying that my own notions on this head may prove conformable to other people's, I think of the old story of *Columbus* and his *egg*.

I have now set this *egg* of ours on its end: —whether it will stand fast, and bear the shocks of discussion, remains to be decided by experience. I think you will not find it stale; but its freshness is a circumstance, that may not give it an equal relish to every palate.

What would you say, if by the gradual adoption and diversified application of this single principle, you should see a new scene of things spread itself over the face of civilized society?—morals reformed, health preserved, industry invigorated, instruction diffused, public burthens lightened, economy seated as it were upon a rock, the gordian knot of the poor-laws not cut but untied—all by a simple idea in architecture?*

I am, &c.

* This plan happened not to come in time for the particular purpose it was designed for.

POSTSCRIPT, PART I.

CONTAINING

FURTHER PARTICULARS AND ALTERATIONS RELATIVE TO THE PLAN OF CONSTRUCTION ORIGINALLY PROPOSED;

PRINCIPALLY ADAPTED TO THE PURPOSE OF A

PANOPTICON PENITENTIARY-HOUSE.*

SECTION I.

PRINCIPAL PARTICULARS.

Principal Particulars *either settled or altered, since the first hasty design, as described in Letter II. and imperfectly represented in Plate I.* See Plate II.†

1. ANNULAR WELL, or vacancy, all the way up, crowned by an uninterrupted opening *sky-light*, instead of stories of intermediate annular area to every two *stories* of cells.

2. *Cells* enlarged in depth, by throwing into them the space occupied in the first design by the *protracted partitions*, and by giving to the upper row in each pair the same depth as to the under row.

3. *Cells*, two laid into one.

4. *Cells—number of stories*, six instead of four.

5. *Chapel*, a regular one, now inserted in the centre: partly instead of the small central area; partly at the expense of the several stories of inspection-lodge.

6. Instead of three *similar* stories of *inspection-lodge*, in the two upper stories annular *inspection-galleries*, backed by the chapel-galleries, in the lowest story *annular inspection-gallery*, inclosing a *circular inspector's lodge*.

7. No *cupola*, a part inserted in the first hasty sketch, rather by way of finish, than with a view to any special use.

8. The *dead part*, viz. that part of the circuit in which there are no cells, here occupying 5-24ths of the circuit instead of 2-48ths, *i. e.* 1-24th: in height five stories out of six, instead of two out of four, and covered by a *projecting front*. — *N. B.* This dead part, depending in point of magnitude and disposition so much upon local and other individual *data*, could not well be settled in all its parts, and accordingly is not represented in the draught.

9. *Communications*, now partly altered, partly fixed: particularly the only thorough passage, termed the *diametrical passage*, now cut through a sunk story, and at its exit joined by a *covered way*, projected downwards from the lowermost inspection-gallery, and terminating in a central *look-out* for the inspection of the yards.

10. The form *polygonal* (a double duodecagon, or polygon of 24 sides) instead of circular.

11. Diameter——According to the present draught 120 feet (exclusive of the projecting front,) instead of 100 feet, the diameter thought of in the original imperfect sketch, with a view to local circumstances.‡

12. *Materials.* — *Iron* much employed, and used for the cell-galleries, for staircases, for doors, and even for pillars, chiefly hollow, instead of brick, stone, or wood. — *Plaister* proposed for the cell floors.

13. Mode of supplying the building with water: chiefly by an *annular cistern*, running round the top of the building, under the roof, immediately within the wall.

14. Mode of *warming* the building: by streams of fresh air, heated in the new way by passing through the inside of vessels, to which fire is applied on the outside; instead of stagnant air, heated by its contiguity to hollow receptacles to which fire is applied on the inside, as in the ordinary German stoves and hot-house flues.

15. *Outlets* or *external area*, settled in subordination to the inspection principle: the *covered way* a *semi-diameter* of the area, ter-

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* Originally printed in 1791.

† For an explanation of the circumstances owing to which the Plates are omitted in the edition of 1791, see the Note, p. 171. The editor has been unable to obtain a copy of them.

‡ Twenty feet, the addition made to the diameter, multiplied by three, gives 60, the addition to the circumference: this divided by 24, the number of the cells, gives 2½, the addition made to each cell at the outside of the wall; *i. e.* at the extreme circumference, round which the polygon is circumscribed.

minating in a *central look-out*, instead of encompassing the area, and being attached to the surrounding wall.

16. *Approach* and surrounding fences, now first settled, and that too in strict subordination to the same principle.

N. B.—The degree of anxiety displayed in the plan of exterior fortification there exhibited, had a more particular view to the state of things in Ireland than in England.

With relation to most of these points further elucidation will be necessary; and with regard to several of them, something in the way of justification will be expected: such :ll be the business of the ensuing pages.

SECTION II.

GENERAL VIEW OF THE WHOLE EDIFICE.

In a General View of the whole Building, according to its present form, three very different, though connected masses, may be distinguished.

1. THE *projecting front*, a rectangular mass, which, being designed to go towards furnishing habitation for the officers of the establishment, has little to distinguish it from a common dwelling-house.

2. The *cellular* part, including, as well that part of the circuit which is actually disposed of in cells, as the *dead part*, which, for the sake of stability, it is thought necessary to lay out in the cellular form, although, for want of light, as being covered by the front, it would not be conveniently applicable to the same use.

3. The *inspection-tower*, comprehending on one story the lowermost inspection-gallery, with the inclosed inspector's lodge; in another, the middlemost inspection-gallery, in which is inclosed the lowermost chapel-gallery, and within that again the area of the chapel;* on a third, the uppermost chapel-gallery.

The cellular mass, together with the inspection-tower inclosed within it, compose the characteristic part of the building; the projecting front forms an accidental and inessential appendage.

The whole of the characteristic part may be conceived as composed of two towers, one within the other, with the annular well between them.†

A particularity that will require to be constantly kept in mind is, that in the two polygono-cylindrical masses, the circumscribing and the inscribed, not only the numbers of the stories do not agree, the latter having but half the number of the former, but that no one story in the interior part coincides in point of level with any one story of the exterior that surrounds it. This want of coincidence is not an accidental, but a characteristic, and almost essential circumstance: since it is by being placed about midway between the floor and the ceiling of the lowermost of each pair of cells, that one floor in each story of the inspection-tower affords a perfect view of two stories in the cellular part.

Principal Dimensions of the Polygonal Part, *comprehending the* Cellular Part, *with the included* Inspection-Tower, *being the whole of what is represented in Plate II.*

WIDTHS.

Semidiameter of the area of the chapel, including the central aperture, .	15
Width of a chapel-gallery, ...	12‡
Width of an inspection-gallery,‖ .	5
Width of the annular area in the same story, and well over it, ...	7§
Width of the grated annular passage, encompassing the annular area on the sunk story, being the same width as that of the cell-galleries above, . .	4
Depth of a cell within-side, . . .	14¶
Thickness of the wall, ...	5
Total, . .	62
Add the other semidiameter, . .	62
Total diameter, .	124

Under the Floor of the Chapel.

Semidiameter of the inspector's lodge, thickness of the wall included, . .	27

* The area of the chapel cannot, perhaps, in strictness be said to form part of the same story with the lowermost chapel-gallery. The floor being several feet below the level of that of the gallery, may be looked upon as forming in that part a story by itself. But this want of exact coincidence is no more than what occurs frequently in common houses.

† By analogy, the inspection-tower might be termed the *medullary* part: the cellular part, the *cortical*.

‡ In some of the impressions of the draught, by mistake 9 feet only.

‖ In some of the impressions of the draught, the lowermost of these galleries has 3 feet of addition given to it, at the expense of the included lodge: this addition it is now proposed to take away, for the reasons given in Sect. 8.

§ In some of the impressions of the draught, by mistake 11 feet.

¶ In some of the impressions of the draught, by mistake 13 feet only. Of the four additional feet thus given to the intermediate well, one was at the expense of the cells, the three others at the expense of the chapel-galleries. It is now, however, proposed to allow it one foot, at the expense of those galleries, making at the diameter eight feet instead of seven: exclusive of the four, which, to the purpose of ventilation, may be considered as little different from so much void space, being so imperfectly occupied by the cell-galleries, constructed of open work like balconies.

Brought over,	27
Width of the inspection-gallery, . .	5
	32
Add the other semidiameter, ...	32
Diameter of the building at the outer circumference of the inspector's gallery in that story, ...	64
Which is the same as in the other stories.	

Cellular Part alone.

HEIGHTS.

From the floor of the sunk story to the floor of the lowest cell level with the ground, including the thickness of the floor, ...			7	6
From the floor to the crown of the arch in each cell, . .	8	0		
Thickness of the arch at the crown, ...	1	0		
Height of the first floor of cells from the ground, including the thickness of the floor above,	9	0		
—— of the second floor, .	18	0		
—— of the third floor, . .	27	0		
—— of the fourth floor, .	36	0		
—— of the fifth floor, . .	45	0		
—— of the sixth floor, . .			54	0
From the crown of the arch on the outside to the lowest part of the slanting roof within the walls, ...	3	0		
From thence to the level of that part of the roof where the annular sky-light begins, .	5	0		
From thence to the level at which the sky-light terminates, ...	5	6		
Thickness of the roof in that part, ...	1	0		
			14	6
Total depth of the annular well,	76	0	76	0
Height of the building from the ground in the cellular part,	69	6		

Inspection Tower alone.

HEIGHTS.

From the intermediate area to a level with the floor of the lowermost story of cells, ...	7	6
Thence to the floor of the inspection-gallery, ...	4	0
From the floor of the inspection-gallery to the roof of ditto, including the thickness of the floor and roof,	8	0
Void space between the lowermost and the middlemost inspection-galleries, ...	10	3
Height of the middlemost inspection gallery, including the thickness of the floor and roof, ...	7	6
Brought over,	37	3
Void space between the middlemost inspection-gallery and the uppermost, ...	10	3
Height of the uppermost inspection-gallery in front, including the thickness of the floor and roof, . . .	7	6
Void space between the uppermost inspection-gallery and the uppermost part of the roof where the annular sky-light terminates, exclusive of the thickness of the roof, . .	20	0
Thickness of the roof, ...	1	0
Height from the floor of the sunk story and annular well as before, . .	76	0

Inspector's Lodge alone.

WIDTHS.

From the centre to the circumference of the central apertures in the floor and the ceiling,*	6
Of the annular space between that and the partition dividing the lodge from the surrounding gallery, being the space underneath a chapel gallery, added to that underneath the chapel area, ...	21
Total semidiameter of the inspector's lodge, ...	†27
Add the other semidiameter, ...	27
Total diameter, ...	54

SECTION III.

ANNULAR WELL.

Annular Well, instead of Stories of Intermediate Annular Area.

How to give to the inspectors access to the prisoners in their cells? In the first design, stories of intermediate area, serving as passages, were allotted to this purpose: in number agreeing with the stories of inspection-lodge: in point of level, coinciding, as was necessary, with the lowest story of each pair of cells. Apertures, cut here and there through the uppermost of these stories of passages, were to give light and air to those below.

* The diameter here given to these apertures is the same as that given to the opening sky-light over them: but they admit of extension, as the demand for light or any other consideration may require.

† In some of the impressions of the draught but 21: the difference, 6 feet, being owing, half of it, to the three feet of addition given by mistake to the annular well, at the expense of the included inspection-tower; the other half, to the addition (now proposed to be taken back) given within that tower to the inspection-gallery in this story, at the expense of the included lodge.

For what purpose these passages? For communication, and no other. But the more I considered, the more plainly I perceived, that for uninterrupted communication there would be no use. The first succedaneum that presented itself was a multitude of *flying staircases* of open iron-work: at last I satisfied myself, that two flights of staircases, from top to bottom, for the prisoners, and short passages joining them from the several stories of the inspection-part, would answer every purpose.* Out went accordingly the stories of intermediate area. Space took the place of matter, from the bottom of the building to the top: and thus a *well* was formed all the way up, crowned by an uninterrupted *sky-light*, as broad, and opening in as many places, as possible.

Airiness, lightsomeness, economy, and increased security, are the evident results of this simple alteration: above all things, airiness, the want of which it might not by any other means have been very easy to remove. This vacuity does service in a thousand shapes: a ditch in fortification, it is a chimney, and much more than a chimney, in ventilation. In this point of view, the distance between the particular ceiling and the general sky-light is so much added to the height of ceiling in each cell: so that instead of 6 cells, each 8 feet high and no more, we have in fact, 6 cells, one of 66 feet, another of 57, a third of 48, a fourth of 39, a fifth of 30, and the lowest not less than 21 feet.

Communication, impeded in as far as it is dangerous, is, instead of being retarded, accelerated, where it is of use. To the inspector, in his gallery, a single *pole* answers, as we shall see, the purpose of many staircases: by this simple implement, without quitting his station, he gives the prisoners egress from, and regress into, their cells. Machines, materials of work, and provisions, find a direct passage by help of a *crane*, without the tedious circuity of a staircase: whence less width of staircase may suffice. The posts at which, were iron gratings of no avail, it would be possible for a desperate prisoner to attack an inspector in his castle, are reduced to three narrow passages on each side: and these, too, crossed and guarded by doors of open-work, exposing the enemy, while they keep him at a distance.† Of all this more particularly in its place. A short hint of the several advantages could not well be omitted in speaking of the part to which they are due.

Add to these another, nor that an inconsiderable one, in point of extent and facility of *inspection:* for though there are but two stories of cells, of which an eye situated in a story of the inspecting tower can reach every part alike, yet in addition to this perfect view partial views are thus opened, from which the management may derive, as we shall see, very material assistance.

What degree of support the inspector of each story of inspection-gallery derives from the view thus acquired by his colleagues in the two other stories, may be seen by the lines described for that purpose in the cells. They are drawn as if from an eye stationed in the back part of the several inspection-galleries. The figures 1, 2, 3, mark the stories of inspection-gallery from which they are respectively drawn. When two of these lines proceed from the same cell, the letter *s* denotes that one of them, which was drawn from the height of the eye of a middle-sized man when *sitting*, and stooping to read or write—say three feet six inches; the letter *u*, that drawn from the eye of the same man standing *upright*—say five feet five inches.

From this particularity in point of *construction*, the following observations may be deduced with a view to *management*:—

1. There is no cell of which some part is not visible from every story in the inspection-tower: and in the lowermost story, not only from the inspection-gallery, but even from the included inspector's lodge.

2. The part thus visible is considerable enough, in point of room, to receive, and expose perfectly to view, a greater number of prisoners than it can ever be proposed to lodge in the same cell.

3. No prisoner can ever make any attempt upon the grating that forms the interior boundary of his cell, without being visible to every one of the three stations in the inspection-part.

4. During meal-times and at church-times, by stationing the prisoners close to the grating, two out of three inspectors may be spared.

5. The cell-galleries are, every one of them, perfectly commanded by every station in the inspection-part.

6. An attempt can scarcely, if at all, be made on a window in the third story of cells, without being visible, not only to its proper story (viz. the 2d) of the inspection-part, but likewise to the first; nor upon a window in the 4th story of cells, without being visible not only to its proper story (viz. the 2d) of the inspection-part, but likewise to the 3d. Those of the 4th story at least, as well as the two above it, are sufficiently guarded by their height; upon the supposition that the cells afford no ropes, nor materials of which ropes could be made in the compass of a night, by persons exposed constantly to the eye of a patrolling watchman.

7. To give to an inspector at any time the

* See below, Communications.

† This refers to the construction of the *dead part* of the circuit; of which, a little further on.

same command over the cell of another inspector as over his own, there needs but an order, drawing a line of limitation in the cells in question, and confining the inhabitants within that line. So long as a prisoner keeps within it he continues visible; and the instant he ceases to be so, his very invisibility is a mark to note him by.

SECTION IV.

PROTRACTED PARTITIONS OMITTED.

Protracted Partitions omitted; or rather, taken into the Cells.

IN the original design, the protracted partitions had two uses: 1. To cut off all view of distant cells; 2. To cut off converse with the cells contiguous on each side. In securing this effect, a large quantity of brick-work, and an annular space of 3 or 4 feet all round, were expended.

Upon maturer consideration, it appeared that the same effect might be equally secured by slighter and cheaper means; and the space thus sacrificed allotted to some other more necessary purpose. Views of the opposite semicircle may be intercepted by sheets of canvass filling up the intervals left by the stories of the inspection-gallery,*—view and converse, as between cells contiguous or adjacent, by barriers of the slightest nature interposed within the cells; such as a netting of wire for example, or even of pack-thread. The object is rather to mark the line, than to oppose a physical obstacle to the violation of it. If transgression be rendered impracticable without discovery, it is sufficient; since it is not here and there an instance that can produce any material mischief, or to the delinquent any gratification capable of paying for the danger. By this slight and flexible barrier, no room need be consumed. As well at top as at bottom, it will give place to furniture; such as a shelf, or the foot of a loom, a bedstead, or a table; and upon order given, it may be removed at any time.

When the protracted partitions were contrived, it was with a view to the assumed necessity of absolute solitude: that plan being, for reasons given below, now relinquished, neither this expedient, nor those now proposed to be substituted to it in the same intention, are any longer of the same importance.

If the interception of view can be considered as an object entitled to much attention, it can only be as between the different sexes. Of the provision made for that purpose, a full account will be found below.

* Making the circuit round the area of the chapel, and omitting the dead part, it will be found that three pieces, each in length about 70 feet, and in width, two about 5 feet each, and the third about 8½ feet, will suffice.

SECTION V.

CELLS, DOUBLE INSTEAD OF SINGLE.

THE change is not a trifling one. It will not lightly be acceded to: the expediency of it will be expected to be fully and satisfactorily made out. It shall be so: by reason, by authority, and by practice. In the letters, I assumed solitude as a fundamental principle. I then copied, and I copied from recollection. I had no books. I have since read a little: I have thought more.

Not that the Panopticon system has any interest in the change. You may apply it, indeed, to mitigated seclusion, but so you may, with equal facility, to absolute solitude. Applied to the degree of mitigated seclusion here proposed, it clears the punishment of its inconveniences, and gives it the advantages that have been looked for from solitude: applied to solitude, it enables you to screw up the punishment to a degree of barbarous perfection never yet given to it in any English prison, and scarcely to be given to it by any other means.

Double cells suppose two prisoners at least in company; and admit of three, or even, in case of necessity, four; and that with much less inconvenience, as we shall see, in point of room, than would result from the putting of two into a cell designed only for one. As to any greater number, I lay it out of the question. The choice lies, it must be remembered, not betwixt solitude and crowded rooms, but betwixt absolute perpetual and universal solitude, on the one hand, and mitigated seclusion in very small assorted companies, on the other: companies, in the formation of which every regard might be paid, and naturally would be paid, to every sort of consideration by which expediency can be influenced—to age, temper, character, talents, and capabilities. Single cells throughout, that is, a number of cells equal to that of the prisoners for whose reception they are designed—cells in which, under the Panopticon discipline, they are to work, and eat, and attend Divine service, as well as sleep, and out of which, unless for the purpose of being aired and exercised, they are never to stir. suppose them doomed, or at least meant to be doomed, during the whole time of their imprisonment, to the state of unmitigated solitude above mentioned; that time, for the most part, a term of not less than seven years.

Of perfect solitude in the penitentiary discipline I know but of one use,†—the breaking

† Mr. Howard knew no other. "The intention of this," viz. (*solitary confinement*)—"the

the spirit, as the phrase is. and subduing the contumacy of the intractable. In this quality it may be a necessary instrument: none, at any rate, can be more unexceptionable; none can be more certain in its effect.* In what instance was it ever known to fail?

But in this quality the demand for it can be but temporary. What it does, if it does anything, it does quickly — better, according to Mr. Howard, in two or three days, than in more.† Why, then, at an immense expense set up a perpetual establishment for the sake of so transitory a use?

In the character of a permanent article of discipline, continued throughout the whole of the confinement, if it were thought necessary on any account, it must be for one or other of two purposes: — 1. To prevent the spread of mischievous instruction; or, 2. To prevent conspiracies for the purpose of escape.

It is not necessary for either purpose: I mean always in contradistinction to the mitigated plan of seclusion, which gives to each man, but one, or at most two companions: I. Not for the former. In the cases in which mischievous inclinations have been apprehended, and in which a plan of solitude, more or less steadily adhered to, has been employed or thought of by way of remedy, the following circumstances have generally concurred: — 1. The *multitude* of the prisoners collected together *large* and indeterminate; 2. The *composition* of that multitude *not* capable of being regulated by any power of *selection*; 3. The whole multitude left together, during the whole, or almost the whole of the four-and-twenty hours, *without inspection* or controul, and that in a narrow space, where no one, however desirous, could escape from the conversation of any other; 4. All of them at liberty, without any other check than that of poverty, to supply themselves to any excess with the means of intoxication; 5. A part, more or less considerable, of that number, about to be *turned loose again* upon the public in a *short* time, with the lessons of mischief fresh in their ears, and ready at the first opportunity to apply the theory to practice. Under the arrangement to which, upon maturer consideration, I have given the preference in comparison with the first hasty conception of perpetual solitude, not one of the above circumstances has place. The number of the prisoners proposed to be put together is very small; in general, but two, at the utmost not more than four: the composition of these little groupes dependent upon the ruling powers in the first instance, and capable of being varied every moment, upon any the slightest intimation which experience or even suspicion can afford: every groupe, and every individual in it, exposed more or less to the scrutiny of an inspecting eye during every moment of their continuance there: all means of intoxication for ever out of reach: the degree of seclusion determined upon, capable, whatever it be, of being—thanks to the all-efficient power of the Panopticon principle — maintained inviolate, while every plan of solitude yet attempted has been broken in upon, and its purpose in great measure frustrated, by occasional associations: and the pernicious instruction, should any such be communicated, not capable, were it to find a learner ever so ripe for it, of being applied to practice for many years to come.

If from reason we turn to example, an instance where the plan of perpetual, total, and universal solitude has been adopted and steadily adhered to, will not anywhere, I believe, be found. Either it has not been aimed at, or if aimed at in principle, it has been relented from in practice.

In the Wymondham Penitentiary-House, each prisoner, it is true, has a separate cell to sleep in: it is, however, only upon occa-

intention of this," says he, in Account of Lazarettos, p. 169, "I mean by day as well as by night, is either to reclaim the most atrocious and daring criminals; to punish the refractory for crimes committed in prison; or to make a strong impression in a short time, upon thoughtless and irregular young persons, as faulty apprentices and the like. It should therefore be considered by those who are ready to commit for a long term petty offenders to absolute solitude, that such a state is more than human nature can bear, without the hazard of distraction or despair. The beneficial effects of such a punishment are speedy, proceeding from the horror of a vicious person left entirely to his own reflections. This may wear off by long continuance, and a sullen insensibility may succeed."

And in another note, p. 192 — "A short term would probably do more to effect a reformation than three or four months' confinement; as it is generally found that in the first two or three days prisoners seem to have their minds most affected and penitent."

Of these notes, the former, it is true, is prefaced with a "wish that all prisoners had separate rooms; for hours of thoughtfulness and reflection," says he, "are necessary." But by separate rooms, all that he had in view was rooms different from the crowded rooms he had been speaking of in the text. In the latter, it is true, the sort of thoughtfulness and reflection he speaks of will with difficulty find place. The busy scenes that pass in crowds keep the mind in a state of fermentation and confusion, that leaves little leisure for the admission of other thoughts. Far otherwise is it in those small societies — societies composed of two or three only, which not having fallen under his observation, do not appear on this occasion to have been in his view. Unapt to give rise to obstreperous mirth, they are peculiarly favourable to that sort of calm reflection which is the concomitant of confidential intercourse.

* Darkness and fasting, one or both, must be added, where it is thought necessary that the effect should be speedily produced: as in the case of English juries.

† Account of Lazarettos, p. 192.

sion* that he works there. If he does not work there, he must work, and unquestionably does work, in company, viz. in the workroom of twenty feet four inches by ten feet,† which was not destined for a few. As a preservative against mischievous instruction, what, then, at those times, that is, throughout the day, becomes of solitude?

In the Gloucester Penitentiary-House, as well as in the other Gloucester prisons, solitude, under the two modifications there adopted, viz. with and without the concomitant of darkness, is, with great propriety, and in conformity to the principle I am contending for, "directed merely as a punishment for refractory prisoners, and to enforce the discipline of the prison."

In the penitentiary-house, indeed, it is provided, that during the hours of rest, the prisoners shall be "*kept entirely separate—in separate cells.*" So much for the night. How is it all day long?—"*During the hours of labour,*" they are to be "*kept separate.*"—How?—absolutely? No: but only "*as far as the nature of the employment will admit.*"

What follows immediately after, I do not perfectly comprehend:—"When the nature of the employment may require *two* persons to work together," (it does not say *two persons or more*) "the taskmasters, or assistant, (it is said) shall be present to attend to the behaviour of such offenders, who shall not continue together except during such hours of labour." How is this? Not more than two persons ever to work together? nor even two without a taskmaster, or his assistant, to attend them? Upon any idea of economy, can this be looked upon as practicable? One man at £50, or £30, or £25 a-year,‡ to do nothing but look on, for every two men who are expected to work? The governor is allowed, I observe, for but one subordinate of each of those descriptions. Are there, then, to be but three pair of prisoners on the whole establishment, to whom the indulgence of so much as a single companion is to be allowed? are all the rest to remain in solitude for the want of an attendant to each pair?—This cannot be. By *two*, then, we are to understand *two or more:* in short, here, as at Wymondham, there are working-rooms in common, in which none are to be without an inspector stationed in some part of the room.—But in this case, too, what becomes of solitude?

If the benefits expected from solitude in the character of a preservative, were not given up by this relaxation, they would be by another. The following I observe prescribed, as one of the four degrees of punishment "to be applied in the discipline of *all* the prisons," the Penitentiary prison, therefore, among the rest. The prisoner, though "on working-days confined to his cell, except during the times of airing,"‖ and though "removed *singly* to the chapel," is, "provided his or her behaviour be orderly or decent," to be "allowed on Sundays, to air in the courts, in the society of his or her class."§ Under this indulgence, too, what becomes of the *antiseptic* regimen? May not the same person who opens a school of corruption as soon as the keeper's back is turned, be orderly and decent during his presence? may not there be *eye-prisoners*, as well as eye-servants? cannot the arts of housebreaking and pilfering be taught on Sundays, as well as on week-days? cannot they be taught quietly, and in a low voice?

So much as to evil instruction. Now as to safe custody. Upon the Panopticon plan, at least, absolute solitude is equally unnecessary to this purpose. Towards effecting an escape, what can two or three do more than one, confined as they are by iron grates while they are within the prison, and by walls when they are without? and, in either case, never out of the eye of an inspector, who is armed and out of reach of attack, and within reach of whatever assistance he can desire? and this, too, as we shall see, but a part of the securities with which the system is armed? for every thing cannot be said at once, nor repeated at each sentence.

Upon the common plans, absolute solitude while the prisoners were out of sight might, for aught I can say, be a necessary precaution: at least it cannot be said to be an useless one. In the course of sixteen hours, a good deal might be done by two or three persons, steeled against danger, reckoning life as nothing, and secure of not being observed.

If perpetual and unremitted solitude is not necessary either to prevent the spread of mischievous instruction, or to prevent escapes, to what other purpose can it be either necessary, or of use? To reformation? but that you have already, either without any solitude, or by the help of a short course of it. What further proof would you wish for? what further proof can human eyes have, of such a change, beyond quietness, silence, and obedience?

To the purpose of example? The effect in the way of example, the effect of the spectacle, receives little addition from the protracted duration of the term.

* *When necessary.* See Sir T. Beevor's Letters in Annual Register for 1786, Let. I.

† Ibid. Let. III.

‡ The salaries allowed by these regulations to a taskmaster, turnkey, and assistant turnkey. Ib. Part I. p. 18.

‖ As to *airing*, a plan for that purpose will be found below, which does not require the slightest infringement upon whatever plan of seclusion may be fixed upon as most eligible.

§ Ibid. Part II. p. 10.

Are you afraid the situation should not be made uncomfortable enough to render it ineligible? There are ways enough in the world of making men miserable, without this expensive one: nor, if their situation in such a place were made the best of, is there any great danger of their finding themselves too much at their ease. If you must torment them, do it in a way in which somebody may be a gainer by it. Sooner than rob them of all society, I would pinch them at their meals.

But solitude, when it ceases to be necessary, becomes worse than useless. Mr. Howard has shewn how. It is productive of gloomy despondency, or sullen insensibility. What better can be the result, when a vacant mind is left for months, or years, to prey upon itself.

This is not all. Making this lavish use of solitude is expending an useful instrument of discipline in waste. Not that of *punishments*, or even a proper variety of punishments, there can ever be a dearth: I mean, of what is usually in view under that name — suffering employed in a quantity predetermined, after an offence long past. But of instruments of *compulsion*, such as will bear scrutiny, there is no such great abundance.

Starving thus employed, is open to suspicion, and may not always be practicable, without prejudice to health. Acute applications, such as *whipping* or *beating*, are open to abuse, and still more to suspicion of abuse. Applied in this way, they would be execrated under the name of *torture*. Solitude thus applied, especially if accompanied with darkness and low diet, is torture in effect, without being obnoxious to the name.

Compared to that mitigated degree of seclusion which admits of allowing two or three to a cell, it is unthrifty in a more literal sense. Pecuniary economy must be sacrificed to it in a thousand shapes: — 1. It enhances the expense of building; 2. It consumes room; 3. It cramps the choice of trades; 4. It cramps industry in any trade.

1. It enhances the expense of building. Admit of double cells instead of single, and observe the saving. Half the number of the partition-walls; a considerable part of the expense of warming; half that of lighting: half the apparatus, whatever it be, dedicated to cleanliness; and the expense of water-closets, upon the most perfect plan, need the less be grudged.

2. It consumes room: 1. Admit of double cells, you gain to the purpose of stowage and manufacture, the space occupied by the partition-walls you have thrown out; 2. It precludes the saving that may be made in double cells, by putting together two sorts of workmen, one of whom required more room than the average allowance, the other less; a weaver, for example, and a shoemaker.

3. It cramps the choice of employments: 1. It excludes all such as require more room than you would think fit to allow to your single cell; 2. It excludes all such as require two or more to work in the same apartment.*

4. It cramps industry in any employment: 1. It precludes an experienced workman from having boys given to him for apprentices; 2. Nor probably would the same quantity of work be done by two persons in a state of solitude, as would be done by the same two persons in a state of society, at least under the influence of the inspection principle. Who does not know the influence that the state of the spirits has upon the quantity of the work? †

Sequestered society is favourable to friendship, the sister of the virtues. Should the comrades agree, a firm and innocent attachment will be the natural fruit of so intimate a society, and so long an union.

Each cell is an island: — the inhabitants, shipwrecked mariners, cast ashore upon it by the adverse blasts of fortune: partners in affliction, indebted to each other for whatever share they are permitted to enjoy of society, the greatest of all comforts.

Should disagreement intervene, how easy will separation be! and what should hinder it? Should the mischief be the result of ill-nature or turbulence of one alone, the re-

* I do not pretend to say, that even in single cells employments would be to seek; or that there is any reason to strain a point for the sake of admitting employments that require an extraordinary measure of room, as if the profitableness of employments were in uniform proportion to the quantity of room they required. I would not, therefore, be at a great expense in building, for the vague chance of giving admittance to trades, which by their difference in point of profitableness might do more than pay for the difference in point of expense in building. What I said in the letters I say still. All I mean here is, that if a latitude in that article can be obtained without any additional expense, the advantage ought not to be foregone.

† True it is, that two boys, or two idle men, if put together without motives for working, would be apt enough to play or lounge the whole time, and not work at all. True it is also, that after having had experience for a certain time of absolute solitude, debarred from all means of employment, the most arrant idler that ever lived would be apt to fly to almost any employment as a relief. But the question here is, not between a recluse without the means either of work or play, and two idlers possessing the means of play without the motives to work, but between one person in solitude, and two others in society, neither the one nor the two having the means of play, but, with regard to work, all having as well the motives as the means.

What more proverbial than the briskness of the cobbler's work, and the cheerfulness of his note? But where would be his cheerfulness without the amusive spectacle of the sort of society afforded him by the flux and reflux of the passing throng?

medy is at hand:—consign him to solitude till tamed; take from him the blessing, till he has learned to know its value; punish him in the faculty he has abused.

A fund of society will thus be laid up for them against the happy period which is to restore them to the world. A difficulty will thus be obviated which has been remarked as one of the most unfortunate concomitants of this mode of punishment, and as having but too powerful a tendency to replunge them into the same abandoned courses of life which brought them to it before. Quitting the school of adversity, they will be to each other as old school-fellows, who had been through the school together, always in the same class.

Let us keep clear of mistakes on all sides. There are four distinctions we should be careful to observe in regard to solitude:—One is, between the utility of it in the character of a temporary instrument applicable to a temporary purpose, and the necessity of it, in the character of a permanent ingredient in the system of discipline. Another is, between the peculiar effects of solitude, and the advantages which are equally obtainable by means of sequestered society, in small assorted companies. A third is, between the effects of such associations, under the common plan and under the all-preservative influence of the inspection principle.

A fourth is, between the duration the solitary discipline is capable of requiring in a penitentiary-house, and that which it may possibly be of use to give to it in a house of correction. It may be longer in the latter.* Why? Because, in a penitentiary-house, all it can be wanted for is to produce immediate submission: for as to reformation and change of character, years are remaining for that task: the offender is not returned from thence into unlimited society. In a house of correction, the term being so much shorter, the remedy must be so much the more powerful. If the reformation of the offender is not completed in his solitary cell, there is no other place for it to be continued in; for from thence he is returned to society at large.†

One thing is good for physic, another thing for food? Would you keep a man upon bark or antimony?

Rejecting, then, the idea of absolute solitude, I lay two of the cells proposed in the original draught into one. Two, accordingly, is the number I consider as forming the *ordinary complement* of the double cell thus formed: *three*, if three are anywhere to be admitted, I style a *super-complement: four*, a *double complement.*

The degree of extensibility thus given to the establishment seems a very considerable advantage: the number is not rigorously confined to the measure originally allotted to it: provision is made for the fluctuation and uncertainty naturally incident to the number of inhabitants in such a house. Though two should be deemed the properest complement for a general one, even so considerable an one as four, especially if not universal, does not seem to threaten any formidable inconvenience. As to safe custody and good order, four is not such a number as can well be deemed unmanageable: if it were, how would so many more be managed all day long in the work-shops, and that without the benefit of invisible inspection, as on the common plans? As to room, four would have much more in one of these double cells, than two would have in a single cell formed by the division of such a double cell into equal parts. A partition, in certain cases, excludes from use a much greater space than that which it covers.‡

Under this arrangement, solitude, in its character of a temporary instrument, is by no means laid aside. On the contrary, it is made applicable to a greater, indeed to an almost unlimited extent, and, what is more, without any additional expense. Two, I call, as before, the *ordinary complement* for these double cells. Conceive the whole number of the cells provided with their ordinary complement: to consign a delinquent to solitude, there needs no more than to deprive him of his companion, and by transferring the companion to another cell, give that one other cell a *super-complement.* In this way, by only giving to half the number of cells a super-complement, half the number of prisoners might be consigned to solitude at once: a multitude of solitaries beyond comparison greater than what is provided for in any prison in which solitude is not meant to be the

* Though even there not a long one. Hear Mr. Howard, in a note before referred to:—"In all manufacturing towns," says he, p. 192, "it would be proper to have solitary cells for the confinement of faulty apprentices and servants for *a few days*, where they should be constrained to work, and have no visitors, unless clergymen: for a short term would probably do more to effect a reformation, than three or four months' confinement; as it is generally found that in the first two or three days prisoners seem to have their minds most affected and penitent."

† I speak with a view to the common plans. In a panopticon house of correction, beginning, where necessary, with a very short course of solitude, I would allot the rest of the term to a state of mitigated seclusion. But in many cases, where a long term is prescribed without distinction or thought about the discipline that will be pursued, the short course of solitude would be sufficient of itself.

‡ Thus, in a room of twelve feet wide, you might join lengthways three tables of four feet in length each: divide the room into two equal rooms by a partition, you can place but two such tables in the same direction, though the partition be but a lath.

constant state of the whole. Even supposing the cells universally provided with a super-complement, give two-thirds of them a double complement, and you may still consign to solitude one-third of their inhabitants at the same time: and so, in case of an universal double complement, one quarter, upon no worse terms than the putting five persons into a space, which, in the ordinary way of providing for the inferior classes, is often made to hold a greater number without any very decided inconvenience.

In estimating the effects of putting two or three or four prisoners together (all under inspection, it must be remembered, all the while) the advantage of grouping them at the discretion of the inspector must not be overlooked. Very inattentive indeed must he have been to this capital part of his business, if in a very short time the character of every individual among them be not known to him as much as is material to his purpose. He will, of course, sort them in such a manner as that they may be checks upon one another, not assistants, with regard to any forbidden enterprise.

Let us not be imposed upon by sounds: let not the frightful name of *felon* bereave us of the faculty of discrimination. Even antecedently to the time within which the reformatory powers of the institution can be expected to have had their effect, there will be perhaps no very considerable part of the whole number, whose characters need inspire much more apprehension than would be justified by an equal number of men taken at large. It is a too common, though natural error to affix to this odious name, whatsoever difference of character may accompany it, one indistinguishing idea of profligacy and violence. But the number of the persons guilty of crimes of violence, such as robbery, the only sorts of crimes which in such an establishment can be productive of any serious mischief, bear, comparatively speaking, but a small proportion to the whole. Those whose offences consist in acts of timid iniquity, such as thieves and sharpers, even though trained to the practice as to a profession, are formidable, not to the peace of the establishment, but only in the capacity of instructors to the rest; while the qualities of perhaps the major part, whose criminality is confined to the having yielded for once to the momentary impulse of some transient temptation, are such as afford little or no danger in any shape, more than would be afforded by any equal number of persons in the same state of poverty and coercion taken at large. They are like those on whom the tower of Siloam fell—distinguished from many of their neighbours more by suffering than by guilt. Drunkenness, it is to be remembered, the most inexhaustible and most contagious source of all corruptions, is here altogether out of the question. Intoxication cannot be taught, where there is nothing (for this I take for granted) wherewith a man can be intoxicated.*

SECTION VI.

DEAD-PART.

It will be necessary, on a variety of accounts, to reserve some part of the circuit of the building for other purposes than that of being disposed of into cells. A chapel, a part of the establishment for which a place must be found somewhere, occupies upon the present plan a considerable portion of the inspection-tower. Even the whole of that circle, were there to be no chapel, would not suffice for the lodgment of all the persons for whom lodgment would be necessary. There must be a chaplain, a surgeon, and a matron; especially, if besides male, there should be female prisoners, which in a building of this kind there may be, as we shall see, without inconvenience.† Should the establishment not be of sufficient magnitude to call upon the chaplain and the surgeon for the whole of their time, and to give a complete lodgment to those officers and their families, some sort of separate apartment they must still have, the surgeon at least, to occupy while they are there.

To such an establishment, not only a governor, but a sub-governor, will probably be requisite: and for the sake of giving an inspecting eye to the approach without, as well as for other purposes, it will be necessary, as we shall see, that the former, and convenient that the latter at least, should have an apartment fronting and looking out that way. And for the lodgment of the governor, at least, there will be required a space sufficient for a style of living, equal or approaching to that of a gentleman.‡

* In showing that absolute solitude is not an essential part, nor indeed any part of the penitentiary system, I had forgot the original Penitentiary Act, 19 Geo. III. c. 74; under which act, solitude extends neither to "labour," nor "devotion," nor "meals," nor "airing." See Section 33.

† See the Section on the separation of the sexes.

‡ To a person of this description, or not much below it, must the provision made in point of room be suited, upon whatever plan the governor is to find an inducement to take upon him the office. Upon the plan of payment by salary, a man who in point of education and responsibility had not some pretensions to be considered as upon that footing, would hardly be entrusted with a concern of such magnitude and importance. Upon the contract plan recommended in the letters (See Letter 9th,) a man who was not of sufficient responsibility and account to require provision to be made for him in the way of lodg-

There must therefore be some part of the building, over and above the central, provided for the lodgment of these several sorts of curators, and consequently not like the rest, disposed of in the form of cells. The part of the circuit thus sacrificed and blocked up, as we shall see, by a projecting front, is what I call the *dead-part.**

To take from the cells the whole of the space thus meant to be employed, would absorb a greater part of the circuit than would be necessary, and thus make an uneconomical diminution in the number of prisoners capable of being provided for. To obviate this inconvenience, in a building of 120 feet diameter, which, were the whole of it disposed into cells, would, by having 24 double cells in a story, and six such stories, contain 288 prisoners, I take, for supposition's sake, for the dead part, a space no more than equal to five such cells.

To obtain what further room may be requisite, and that without any further prejudice to the number of the cells, I add a quadrangular front, projecting, say for instance 20 feet, reckoning from a tangent to the circle. This, with the help of the space included by a perpendicular drawn from such tangent to the last of the cells thus sacrificed on each side, would form a considerable projection, extending in front about 73 feet.† By this means, the officers in question might all of them possess some sort of communication with the exterior approach, while the back part of the space thus appropriated would give them communication with and inspection into the part allotted to the prisoners, and, to such of them as required to be stationed in the heart of the building, access to their common lodgment in that place.

The front, thus formed, would not however require to be carried up to the utmost height of a building so lofty as the circular part, viz. upon the present plan about 68 feet, roof included. Prisoners, as their occasion to ascend and descend recurs, as we shall see, at very few and stated periods, may be lodged at almost any height, without sensible inconvenience;‡ but this is not equally the case with members of families in a state of liberty. The ceilings, though higher than those of the cells (which are 8 feet in the clear,) would not require to be so lofty as the distance from floor to floor in the inspection part; a number of stories, though not so great as six, yet greater than three, might therefore be thus allotted. To dispose of the surplus to advantage, I omit a height at top, equal to and level with that of the uppermost story of cells. The corresponding part of the circuit of cells, comprehending a space equal to that of five of these double cells, is thus restored to the light, and free to be converted into cells.‖ This part, or any of the cells composing it, may answer upon occasion the purpose of *an infirmary.*

It possesses in this view a peculiar advantage: The front may have a flat roof, which, being raised to the level of the floor, or the bottom of the windows of this infirmary part,

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ment upon a similar footing, would hardly be accepted of. In the former case, the governor would require a master manufacturer, or taskmaster, under him, to ease him of the most irksome and laborious part of the details, and occasionally of the whole, in case of sickness or necessary absence. And in the latter case, were a master manufacturer to be the contractor, while his own attention was principally employed in turning the establishment to account in the way of profit, he would find it necessary to have under him a man of trust, in the character of keeper, for the purpose of superintending the government of the prison, and paying a more particular attention than the occupations of the principal could admit of his paying to the great objects of safe custody and good order.

* A wall, in contradistinction to erections with windows in them, is commonly called a *dead wall.*

† This part could not be delineated in the draught Plate II., nor, consequently, the dead-part distinguished from the rest. The disposition of these two parts must be governed in a considerable degree by local circumstances, and in its details is not essential to the composition of the building. The outline of it is, however, represented in Plate III.

‡ This would be, exclusive of the roof, 54 feet, being the aggregate height of the six cells; the floor of the lowest story of cells being supposed level with the ground; that is, even with the ground-floor of the projecting front upon the same level. But it will probably be found convenient, as we shall see, to raise the ground-floor of the front to a level with that of the lowermost story of the inspection part, the floor of which must be 4½ above that of the lowermost story of cells; and to put under the cells a sunk floor, running all around, which may be about 7½ feet lower than that of the cells, and consequently about 12 lower than that of the lowermost story of the inspection part. In that case, if the ground is at the same height before the front as all round the cells, there must be steps from it to the height of 4½ feet (say 9 steps 6 inches each) to reach the ground-floor: which will reduce to 49½ feet the height from the ground-floor to the ceiling of the highest story of cells; and to 43½ that from the same ground-floor to the windows of the same story of cells: at which level the projection must terminate, in order to afford by its roof a terrace for the Infirmary, in manner here proposed.

This want of coincidence between the floors of the internal part and those of the external, in other words, between the inspection part and the cellular (a circumstance necessary to give each floor of the former the command of two floors of the latter,) introduces a degree of intricacy which affects every conception that can be formed, and every account that can be given, of almost any part of this unexampled structure.

‖ It may possibly, however, be found eligible to sacrifice one of these cells, viz. the centre one, to let in light by a sky-light for the staircase for chapel visitors. See Sect. 12, *Communications — Staircases.*

and covered with lead or copper, will form a terrace, on which convalescents, though incapable of the fatigue of descending and reascending, may take the air. A space of 73 feet in front, and in width where narrowest, (viz. at its junction with the circle,) 20 feet, and where widest (viz. at the furthest part from the circle,) near 32 feet, would afford very convenient room for this purpose; and the separation between the males and females might here likewise, if thought necessary, be kept up by a partition wall cutting the terrace in the middle.

A more convenient infirmary could scarce be wished for. The only expense attending it, is the difference between that of a flat and that of an ordinary roof for the quadrangular projection over which it looks; and even this difference is not an essential one. On the ordinary plans, while there are no sick, the infirmary is vacant and useless. Such need not be the case here. Guarded and watched in the same manner, the infirmary cells are as fit for the reception of prisoners in health as any other cells. When the establishment is in this state of repletion, suppose an infirmary cell wanted for a sick person, it is but dismissing its former inhabitant, or inhabitants, to an ordinary cell or cells, upon the principle already mentioned.

The part thus denominated the dead-part, would be very far from lost. It would afford room for many necessary articles in the composition of the building. Out of it ought to be taken:—

1. Staircases for the prisoners and inspectors; for which, see the head of Communications.
2. Entrance and staircases for the chapel visitors; for which, also see the head of Communications.
3. Passage and staircase to the inspector's lodge; for which, see the same title.
4. Vestry for the chaplain.
5. Organ and organ-loft.
6. Clock-house and belfry.

SECTION VII.

CHAPEL.

*Chapel Introduced.**

THE necessity of a chapel to a penitentiary-house, is a point rather to be assumed than argued. Under an established church of any persuasion, a system of penitence without the means of regular devotion, would be a downright solecism. If religious instruction and exercise be not necessary to the worst, and generally the most ignorant of sinners, to whom else can they be other than superfluous?

This instruction, where then shall they be placed to receive it? Nowhere better than where they are. There they are in a state of continued safe custody; and there they are without any additional expense. It remains only to place the chaplain; and where the chaplain is, there is the chapel. A speaker cannot be distinctly heard more than a very few feet behind the spot he speaks from.† The congregation being placed in a circle, the situation, therefore, of the chaplain should be, not in the centre of that circle, but as near as may be to that part which is behind him, and, consequently, at the greatest distance from that part of it to which he turns his face.

But between the centre of the inspection-tower all round, and the intermediate well, there must be, at any rate, whatever use it may be put to, a very considerable space. What, then, shall be done with it? It cannot be employed as a warehouse consistently with the sanctity of its destination; nor even independently of that consideration, since, if thus filled up, it would intercept both sight and voice. Even if divine service were out of the question, it is only towards the centre that this part could be employed for stowage, without obstructing inspection as much as in the other case it would devotion; nor can it, even in that part, be so employed, without narrowing in proportion the inspector's range, and protruding his walk to a longer and longer circuit. What, then, shall we do with this vacuity? Fill it with company, if company can be induced to come. Why not, as well as to the Asylum, the Magdalen, and the Lock Hospital, in London? The scene would be more picturesque; the occasion not less interesting and affecting. The prospect of contributions that might be collected here as there, will bind the manager to the observance of every rule that can contribute to keep the establishment in a state of exemplary neatness and cleanliness, while the profit of them will pay him for the expense and trouble. Building, furniture, apparel, persons, every thing, must be kept as nice as a Dutch house. The smallest degree of ill scent would be fatal to this part of his enterprise. To give it success, prejudices indeed would be to be surmounted; but by experience — continued and uninterrupted experience — even prejudice may be overcome.

* The chapel, not being a characteristic part of the design, will be sufficiently understood from the draught, without any particular explanation. For the whole detail of this part, I am indebted to my professional adviser, Mr. Revely, of Great Titchfield Street, Marybone, whose beautiful and correct drawings of views in the Levant have been so much admired by the dilettanti in Grecian and Egyptian antiquities.

† I found this by experiments made on purpose in churches. See also Saunders on Theatres.

The affluence of visitors, while it secured cleanliness, and its concomitants healthiness and good order, would keep up a system of gratuitous inspection, capable of itself of awing the keeper into good conduct. even if he were not paid for it: and the opposite impulses of hope and fear would thus contribute to ensure perfection to the management, and keep the conduct of the manager wound up to the highest pitch of duty. Add to this the benefit of the example, and of the comments that would be made on it by learned and religious lips: these seeds of virtue, instead of being buried in obscurity, as in other improved prisons, would thus be disseminated far and wide.

Whatever profit, if any, the contractor could make out of this part of the plan, why grudge it him? why to his establishment, more than to any of those just mentioned? Not a penny of it but would be a bounty upon good management, and a security against abuse.

If the furniture and decoration of the chapel would require some expense, though very little decoration would be requisite, a saving, on the other hand, results from the degree of openness which such a destination suggested and rendered necessary. On the original plan, the whole circuit of the central part, then appropriated solely to inspection, was to have been filled with glass: on the present plan, which lays this part open in different places, to the amount of at least half its height, that expensive material is proportionably saved.

On the present plan, it will be observed, that three stories of cells only, viz. the second, third, and fifth from the top, enjoy an uninterrupted view of the minister.* That the inhabitants of the other stories of cells may have participation of the same benefit, it will be necessary they should be introduced, for the occasion, into or in front of such of the cells as are in a situation to enjoy it. This might be effected, and that with the greatest ease, were the whole establishment to receive even a *double complement*.

The two parties, composed of the fixed inhabitants of each cell on the one hand, and the strangers imported from a distant cell on the other, might be stationed either in one continued row in the front of the cell-galleries, or the one party in that line, and the other immediately within the cell-grating. In neither case need the law of seclusion be suffered to be infringed by converse: both parties are alike awed to silence by an invisible eye—invisible not only to the prisoners in front, but to the company behind: not only the person of each inspector, but his very station, being perfectly concealed from every station in the chapel.†

* In some impressions of the draught, the minister's station, and, consequently, the views and want of views that result from it, are not represented: but they will readily be conceived.

† All this may be very well, said an intelligent friend, in the way of *example*:—but how stands it upon the footing of *reformation*? Might it not have ultimately a corruptive effect upon the persons thus exhibited,—shaming them, indeed, and distressing them at first, but by degrees hardening them, and at length rendering them insensible? Would it not, in short, to this purpose, be a sort of perpetual pillory?

To this I answer—

1. That, of the two, example and reformation, example is the greatest object; and that in the proportion of the number of the yet innocent to that of the convicted guilty.

2. That the offences for which persons are subjected to this punishment are deemed of a deeper dye, and as such to require a punishment more severe than that even of those who are consigned to the pillory.

3. That at their trials there is not one of them but must have been exhibited in a manner equally public, and in circumstances reflecting a much greater measure of humiliation and shame: with this difference too, that on that occasion each person is exhibited singly, and the eyes of the whole audience are fixed upon him alone; that he is to speak as well as to hear, and stands forth in effect the sole hero of the melancholy drama: whereas, on an exhibition like that here proposed, the attention of the spectators, being divided among so many, scarcely attaches individually upon any one. Besides that upon his trial a man is held forth to view with the marks of guilt fresh upon his head: whereas at the remote period in question he does not appear till a progress more or less considerable may be presumed to have been made in the career of penitence, and the idea of guilt has been covered by expiation.

Should these answers be thought not to have disproved the mischief, nothing can be simpler than the remedy. A mask affords it at once. Guilt will thus be pilloried in the abstract, without the exposure of the guilty. With regard to the sufferer, the sting of shame will be sheathed, and with regard to the spectators, the salutary impression, instead of being weakened, will be heightened, by this imagery. The scene of devotion will be decorated by—why mince the word?—by a masquerade: a masquerade, indeed, but of what kind? not a gay and dangerous, but a serious, affecting, and instructive one. A Spanish *auto-da-fé* has still more in it of the theatre:—and what is the objection there? That the spectacle is light or ludicrous? No: but rather that it is too serious and too horrible.

This, it is to be noted, is the only occasion on which their eyes will have to encounter the public eye. At all other times, be their visitors ever so numerous, there will be no consciousness of being seen, consequently no ground for the insensibility which might be apprehended from the habit of such consciousness.

Where there is patience to discriminate, the worst institutions may afford a hint that may be of use. I would not turn my back upon reason and utility, though I found them in the Star-chamber or the Inquisition. The authors of the latter institution, in particular, whatever enormities and absurdities may be laid to their charge, must at least be allowed to have had some knowledge of *stage effect*. Unjust as was their penal

SECTION VIII.

INSPECTION-GALLERIES AND LODGE.

In the three stories of the inspection-tower, annular inspection-galleries, low and narrow, surrounding in the lowermost story a circular inspection-lodge; instead of three stories of inspection-lodge, all circular, and in height filling up the whole space all the way up.*

Two desiderata had been aimed at in the contrivance of the inspector's stations: 1. The unbounded faculty of seeing without being seen, and that as well while moving to and fro, as while sitting or standing still: 2. The capacity of receiving in the same place visitors who should be in the same predicament.

The second of these objects is not to be dispensed with. If the governor or sub-governor cannot, for the purposes of his business, receive company while he remains in this station, he must, as often as he receives them, quit not only the central part, but the whole circle altogether, leaving his place in the inspection part to be supplied by somebody on purpose. Hence, on the one hand, a relaxation of the inspective force: on the other, an increase in the expense of management.

Suppose it possible, as I conceive it will be found, for the inspector's invisibility to be preserved, upon condition of giving up that of the visitors, would the former advantage be sufficient without the latter? Not absolutely: for confederates, as the discrimination could not well be made, might gain entrance in numbers at a time, and while one was occupying the attention of the inspector, others might by signs concert enterprises of mischief or escape with the prisoners in their cells. Such, at least, might be the apprehension entertained by some people—at least upon the face of this single supposition; though to one whose conception should have embraced the whole system of safeguard and defence, the danger would, I think, hardly appear formidable enough to warrant the incurring any expense, or sacrificing any advantage.

Upon the first crude conception, as stated in the Letters, my hope had been, that by the help of blinds and screens, the faculty of invisible inspection might have been enjoyed in perfection by the whole number of persons occupying the central part, wherever they were placed in it, and whether in motion or at rest. I am now assured, and I fear with truth, that these expectations were in some respects too sanguine. I mean, as to what concerns ideal and absolute perfection: at the same time that for real service, their completion, I trust, will not be found to have sustained any material abatement.

Were I to persist in endeavouring to give this property of invisibility with regard to the cells, as well to the person of the inspector as to every part of the large circle in which I place him, and to every object in it, his situation would stand exposed, I am assured, to this dilemma: if he has light enough to do any business, he will be seen, whatever I can do, from the cells: if there is not light enough there for him to be seen from the cells, there will not be light enough to enable him to do his business.

The difficulty would not be removed, even though the chapel part in the centre were thrown out, and the inspector's apartment extended so as to swallow up that central part, and occupy the whole circle. My expedient of diametrical screens, or partitions crossing each other at right angles, would not answer the purpose:† if they extended all the way from the circumference to the centre, leaving no vacuity at that part, they would divide the whole circle into separate quadrants: a man could be in but one of these quadrants at a time, and while he was in that one he could see nothing of the cells corresponding to the others. Stationed exactly in the centre, he would see indeed, but he could at the same time be seen from, all the cells at once. No space can ever be so exactly closed as to exclude the light, by any living figure.

Supposing the apertures I had contrived in the screens instead of doors capable of answering the purpose, they would leave to the

system in its application, and barbarous in its degree, the skill they displayed in making the most of it in point of impression, their solemn processions, their emblematic dresses, their terrific scenery, deserve rather to be admired and imitated than condemned.

Nihil ex scenâ, says Lord Bacon, speaking of procedure in the civil branch of the law: *Multum ex scenâ*, I will venture to say, speaking of the penal. The disagreement is but verbal: *Scena*, in the language of the noble philosopher, means *lying:* in mine, *scena* is but *scenery.* To say, *Multum ex scenâ*, is to say, lose no occasion of speaking to the eye. In a well-composed committee of penal law, I know not a more essential personage than the manager of a theatre.

* It is to the ingenuity of Mr. Revely that I am indebted for this very capital improvement, which I did not submit to without reluctance. It occurred to him in contriving the construction of the chapel, in the room of some crude ideas of my own, a detailed description of which would take up more room than it would be worth. The floors of the present inspector's galleries were to have been continued inwards as far as what constitutes now the area of the chapel. The governor and his subordinates were to have lived in them on week days, and on Sundays these floors were to have answered the purpose of galleries to the chapel. All the way up from floor to floor there were to have been windows, which were to have been got rid of somehow or other during the time of divine service.

† See Letter II.

lodge so provided but little if any advantage over an annular gallery at the extremity of the circle, as contrived by Mr. Revely. The circuit might be performed nearer the centre; but still, to carry on the process of inspection, a circuit must be performed. Nor could it be performed in an exact circle: the smaller circle thus meant to be performed would be broken in upon and lengthened in four places by zigzags, which would retard a man's progress more than an equal length of circle, and might, upon the whole, consume a portion of time little less than what would be requisite for performing the perambulation in Mr. Revely's inspection-galleries.*

Add to this, that the darkness thus spread over the station of the inspector would not admit of any cure. A candle could not be made to illuminate any object he had occasion to see, without throwing out rays that would render him more or less visible, and his situation and occupation more or less apparent, from the cells. If a screen, concentric to the circumference of the room, were anywhere interposed, and light admitted within side of it by a sky-light or void space over the centre of the building, that would increase the length of the zigzag circuit to be performed through the diametrical screens still more: if there were no such concentric screens, the thorough light would be completely let in, rendering the inspector and every other object in the room completely visible from all the cells.

Happily, this union of incompatible conditions, however requisite to fill up the measure of ideal perfection, is far from being so with regard to practical use. In the narrow annular gallery, as contrived by Mr. Revely, the condition of invisibility may be preserved, I am assured, in full perfection. By being painted black in the inside, that station may be rendered, by the help of blinds, as I had proposed, completely dark, its narrowness rendering it impermeable to the thorough light.

To change his prospect, the inspector must, it is true, be obliged to shift his station. He must therefore from time to time patrol and go his round in the manner of a centinel or a watchman: and this must form a considerable part of his employment. It need not, however, occupy any thing near the whole.† Stationed at no more than 28 or 29 feet from the exterior windows, and close to the space illuminated by the ample sky-light over the annular well, he would have light enough to read or write by: and these employments, by the help of a portable stool and desk, he might carry on at times, at any part of the circle. Books may be kept, entries made, as well in a room of an annular figure, as in a round or square one.

Nor will the time employed in perambulation be thrown away, or expended upon the single purpose of keeping order among the prisoners. Had he, instead of this ring, had the whole circle to range in, he would have had frequent occasion thus to travel in the circumference, were it only to give occasional orders and instructions to the prisoners as they sit at work in their cells, as well as to let them in and out, in manner already mentioned. ‡

* The truth is, what one would hardly have supposed, that for performing this perambulation, a walk of about 46 feet and back again in a straight line, is pretty well sufficient. Station the inspector anywhere with his eye contiguous to the outer circumference of his ring, he can, without quitting the spot he stands or sits on, command a view of seven cells on each side. In the same ring, 46 feet may be described in walking without deviating from the right line: and 46 feet is the length of the chord subtending the space occupied in the circumference by 5 cells. A walk, then, in a line equal and opposite to the chord subtending the part of the gallery that corresponds to the dead-part, will give an inspector in his gallery a view of the whole circuit. If, as in case of the admission of female prisoners, the circuit be divided in any story between a male and female inspector, the part allotted to each may, it is evident, be commanded without any change of place. The views thus obtained are not, it must be confessed, complete ones: more or less of every cell but two being all along intercepted by the partition-walls. But it is chance only, and not design, that can withdraw a prisoner in any part of the circuit out of the inspector's view: never knowing in what part of the gallery the inspector is at the time, no one part of any cell can promise him any better chance of concealment than another.

The calculation, it is to be observed, is taken from the real design: were the measurement to be performed upon the engraving, the result, owing to the error already mentioned, would be still more favourable.

† The greatest distance from one part of his range to the other would be 93 feet, being half the length of the circumference of the circle at that part.

‡ See Sect. 3, *Annular Well*, and Part II. Sect. *Airing*.

Your occasional vigilance will not do, says an objector: *Your prisoner will make experiments upon it, discover when Argus nods, and make his advantage of the discovery. . He will hazard a venial transgression at a venture: that unnoticed, he will go on to more material ones.* Will he? I will soon put an end to his experiments: or rather, to be beforehand with him, I will take care he shall not think of making any. I will single out one of the most untoward of the prisoners. I will keep an unintermitted watch upon him. I will watch until I observe a transgression. I will minute it down. I will wait for another: I will note that down too. I will lie by for a whole day: he shall do as he pleases that day, so long as he does not venture at something too serious to be endured. The next day I produce the list to him. —*You thought yourself undiscovered: you abused my indulgence:*

One expedient there remains, by which, if it be worth while, the invisibility of the inspector may be preserved to him, without the obligation of ever stirring from his seat. This, however, is subject to two restrictions: one is, that whenever he quits a particular spot in the room, to pass to any other part of the same room, he must become visible: the other is, that his invisibility is not shared by any other person in the room. The expedient is to place the inspector in a kind of lantern, shaped somewhat like two short-necked funnels joined together at their necks.

Placed as before on a floor situated midway between the floor and the ceiling of the lowermost of the two stories he commands, his light comes to him from a spot elevated above the eye of a person standing in the uppermost of those stories; consequently, in all cases above the eye of any person dwelling in that upper story. Level with his eye, whether sitting or standing, the lantern narrows to such a degree as to enable him to carry his eye close to the circumference all round, without changing the spot he sits or stands on.

To give him his view, the lantern is pierced at both elevations with small holes, corresponding, as upon trial shall be found most convenient, each of them to one or two or some greater number of the cells. These holes are no larger than the aperture of a common spying-glass, and, like that, closed by a piece of glass, which if necessary might be coloured, or smoked, or darkened by a blind. Grant that after all they will not perfectly exclude the thorough light, nor prevent his figure from being to a certain degree visible from the cells: still, however, the part of his figure thus betrayed will be so small, that to the purpose of discovering to a prisoner in his cell whether the eye of the inspector is at that moment directed towards him or not, it will be the same thing as if he were invisible. That by diminishing the apertures to a certain degree, the effect might be compassed, is indubitable; for the lantern might be of the thinness of paper: in short, it might in that part be of paper, and then a pin-hole would be sufficient to give him a view. Any opaque object, to let down by a line and pulley on his going out, would prevent his absence from being discernible. The difference between a body of that magnitude constantly at rest, and one occasionally in motion, would be masked by the smallness of the apertures.

At the altitude reaching between the height of his eye when sitting, and the height of his eye when standing, the lantern could not be too narrow: it should be only just wide enough to admit his head and shoulders with ease. Above and below that height, the wider the better, for the sake of air and room, so as it did not swell out in such manner as to intercept his view.

The next question is, how to prevent the prisoners from seeing when it is he quits his station? His exit and return, if performed by a door in the side, would be visible from all, or almost all the cells — his lantern not serving him in the capacity of a screen on such occasions, to any degree worth mentioning. To prevent such discovery, his entrance must be, not at an ordinary door on the side, but at a trap-door, by a ladder from below. The lantern might, however, besides that, be furnished with a door at the side, to give him passage at times, when the concealment of his situation was no longer material, and when he saw occasion to show himself for any purpose to the inhabitants of any particular cell; for instance, to give a prisoner passage to or from his cell, for the purpose and in the manner already mentioned.

The central aperture, large as it is, would be no bar to the employing of this contrivance. The lantern, it is true, could not occupy this central part: it must be placed somewhere on one side of it, in some part of some surrounding ring. The inspector, therefore, while stationed in this lantern, would not have a view equally near of all his cells; but of all he would have some view, and that, one may venture to say, a sufficient one: the difference would only be the distance from the centre of the lantern to the centre of the building; say from ten to a dozen feet. The part, too, from which he was in this manner farthest removed, might be the dead-part, where there are no cells — a division which, upon the present plan, occupies five parts in twenty-four of the whole circuit.

Still, however, an apartment thus circumstanced would not serve perfectly well for visitors; for they, at any rate, would be visible to the prisoners: which, for the reasons already mentioned, it were better they should not be. Here, then, comes in one use of the inspector's lodge, a room situated within the inspection-gallery, and encircled by it all round. Many other uses, and those very material, will be observed in it, when the construction has been described: uses, to which, it will be equally manifest that a transparent room, fitted up with an inspection-lantern, would not be applicable with advantage.

The inspector's lodge is a circular, or rather annular apartment, immediately underneath

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see how you were mistaken. Another time, you may have rope for two days, ten days: the longer it is, the heavier it will fall upon you. Learn from this, all of you, that in this house transgression never can be safe. Will the policy be cruel? — No; it will be kind: it will prevent transgressing; it will save punishing.

the chapel. The diameter I propose now to give it is 54 feet, including the aperture in the centre.*

The central aperture in this story is of the same diameter, as in the area of the chapel and the dome that crowns it, viz. 12 feet: it serves here to light the centre of the *diametrical passage*, of which, under the head of *communications*. This aperture is likewise of farther use in the way of safe-guard; for which also see the head of *communications*.

As the central aperture in the floor of the lodge gives light to the passage in the story underneath, so does the correspondent aperture in the area of the chapel give light to the lodge.

Of these central apertures, that which is in the floor of the chapel takes nothing of the room from visitors. During chapel times it is closed: the state of darkness to which it thereby reduces the lodge is then of no consequence, since at those times nobody is there. So likewise, in a cold winter's evening, when day-light gives place to candle-light, the faculty of closing this aperture will probably be found to have its convenience. Its height, at the circumference, is that of the inspection-gallery, about 7 feet; at the central aperture about $13\frac{1}{2}$ feet;† within that aperture, about 61 feet, that being the depth below the sky-light by which the central apertures are crowned. The ceiling is consequently a sloping one; dropping, in the course of 18 feet, about $6\frac{1}{2}$ feet, viz. from $13\frac{1}{2}$ to 7.

All round the circuit, the dead-part excepted, runs a narrow zone of window, to open to the lodge an occasional view of the cells. Of these, the two lower stories may be seen through the lowermost inspection-gallery; the others without any intermedium.

The ways in which this view might be opened are more than one: the simplest is to put two rows of panes; one for giving a view of the two lowermost stories of cells, a little below the highest part of the upright partition: the other for the four remaining stories, in the chord subtending the angle made by the junction of that partition with the ceiling. To these may be adapted blinds of coarse white muslin or linen, pierced every inch or two with eyelet holes about the size of an ordinary silver spangle. By this means, matters may unquestionably be ordered in some way or other, so that no view at all shall be obtainable in the cells of any thing that passes in the lodge; at the same time that a person in the lodge may, by applying his eye close to any of the holes, obtain a perfectly distinct view of the corresponding cells.

By the central aperture, were that all, a moderately good light, it is supposed, would be afforded to the lodge: and this light cannot but receive some addition from the luminous zone thus given to the circumference.‡

To gain the height at which the business of inspection can in this manner be occasionally performed from the lodge, an ascent of about $1\frac{1}{2}$ or 2 feet must be made: this may be done by a circular bench of about 2 feet wide, attached all round to the partition-wall. It may be distinguished by the name of the *inspection-platform* or *inspection-bench*.

By means of the lower part of this zone, the inspector of the gallery attached may himself be inspected by his superiors from the lodge: reciprocity will be prevented by the advantage in height given to the commanding station. He may also be relieved at any time; and whenever the windows of the gallery are thrown open for air, the lodge succeeds, in a manner of course, to its inspection-powers; the view brightening of itself at the time when a view particularly clear is more particularly wanted. So, likewise, when the inspector in the gallery is obliged to show himself at any particular spot; for instance, by opening the door of one of the cells, losing thereby his omnipresence for the time.‖

The lodge is the heart, which gives life

* In some of the impressions of the draught it appears but 42 feet: difference 12 feet. But of this, six feet is taken away from this part by an error in the draught, as already mentioned: the other six feet, by the three feet added to the depth of the inspection-gallery in this story—an addition which I have determined to take away: it has no specific use; and it would throw the lodge so far back as to be precluded by the bottom of the middlemost inspection-gallery from the possibility of having any view at all of the uppermost story of cells.

† The draught does not give quite so much. The higher the better, so long as it does not raise the floor of the chapel so much as that the heads of the chapel visitors, when standing, shall conceal the minister from the prisoners when kneeling in the second story of cells.

‡ The Pantheon at Rome, which is more than twice the height of the space between the floor of the lodge and the opening sky-light over the aperture, is lighted, and, according to Mr. Revely's observation, very well lighted, by an aperture of about twice the diameter of the one here proposed.

‖ In a Panopticon which had eight stories of cells, it might perhaps be not amiss to make the experiment of the lantern. It might be performed on a floor between the lodge and the chapel; the ladder or small staircase to it, like that of a pulpit, ascending through the ceiling of the lodge. It might be tried at a small expense: and in case of its not answering, it would be easy to give to this story the form of the other Possibly, in different ways, both arrangements might have their use.

But the sorts of panopticons to which the contrivance of the lantern is more particularly adapted, are those in which seclusion from society would be out of the question; such as houses of industry, free manufactories, or schools.

and motion to this artificial body: hence issue all *orders:* here centre all *reports.*

The conversation-tubes, spoken of in the Letters, will on this occasion be recollected: here they will find employment in more shapes than one.

One set is for holding converse with the subordinate inspectors in the two superior galleries. A small tube of tin or copper* passes from the lodge, in a horizontal direction, to one of the supports of the lowermost inspection-gallery, running immediately underneath the roof, to which it is attached by rings. Here, bending to a right angle, it runs up along the support till it reaches that one of the two superior galleries for which it is designed: it there terminates in a mouth-piece level with the ear or mouth of a person sitting there. A similar mouth-piece is fitted to it at its commencement in the lodge.

A tube of this sort for each gallery may be attached to every one, or every other one, of the 19 gallery-supports, corresponding to the number of the cells.

The tubes belonging to the different stories should be attached together in pairs, with their respective mouth-pieces in the lodge contiguous, that a superior in that apartment may have it in his power to hold converse with the subordinates of the two different galleries at the same time, without being under the necessity of vibrating all the while from place to place.

Whether the voice alone will be sufficient, or whether a bell will be necessary, to summon a subordinate inspector from the most distant part of his gallery to the station corresponding to that chosen by the superior in the lodge, may perhaps not be capable of being decided to a certainty without experiment. If a bell be necessary, it may be convenient to have one for every tube; and the wire, by running in the tube as in a sheath, will be preserved from accidents.†

The other set of conversation-tubes is to enable an inspector in the lodge to hold converse in his own person, whenever he thinks proper, with a prisoner in any of the cells. Fixed tubes, crossing the annular well, and continued to so great a length, being plainly out of the question, the tubes for this purpose can be no other than the short ones in common use under the name of *speaking-*

* About the size of a *pea shooter*, a plaything used by children for blowing peas, will probably be sufficient.

† The power possessed by metallic tubes of conveying the slightest whispers to an almost indefinite distance, can be no secret to such readers as have seen any of the exhibitions of speaking figures, whose properties depend upon this principle.

Many a reader may also have seen Mr. Merlin's ingenious contrivance of written tablets of orders, for masters above to servants below, an index pointing to a tablet in the superior room, giving motion to an index pointing to a duplicate tablet in the inferior room, upon the principle of the drawing machine called a *pantograph.* The conversation-tubes above mentioned, might perhaps supply the place of those order-tablets, and, if it all, with very considerable advantage. The intercourse by the tablets is *limited* to the few orders they can be made to hold: it is not reciprocal. The apparatus, from what I recollect of Mr. Merlin's price, would, I should suppose, be more expensive.

For such purposes, the tube alone, without a bell, would answer the purpose, supposing the servant to be in the room into which it opened, and not unwilling to receive the order: but for summoning him from a distant part of the house, and for putting a negative upon all pretence of not hearing, nothing, it is evident, but a bell, can serve.

The tube, as already mentioned, might serve as a sheath to inclose the bell: thus the expense of the sheaths, which are at present employed in some cases, would be saved. At the places where cranks are necessary, the tubes, that the continuity may not be broken, must be enlarged to receive them. Whether the voice would continue intelligible, as well as audible, after so many inflexions of the tube as may be necessary in some cases in common houses, is more than, without experiment, I can pretend to say. In the present case, there is but one angle; and even that, in case of necessity, might be got rid of.

Wire, by its rigidity, being liable to twist and snap, perhaps the flax of New South Wales, when that admirable commodity comes to be supplied in sufficient quantities for manufacture, might be substituted with advantage.

Under the different mouth-pieces opening into the servants' apartment, might be painted the names of the rooms to which they respectively corresponded.

Copper, by those who would not grudge the expense, would on several accounts be evidently preferable to tin. In the master's apartment, gilt mouth-pieces would form an ornamental addition to the furniture.

It is certainly an awkward circumstance, and which occasions much waste of time in families, for a servant to be obliged to go up three or four pair of stairs to receive orders which are to be executed in the kitchen from whence he came.

Since writing the above, I recollect having seen a tube employed for this purpose many years ago at Messrs. Nairne and Blunt's, mathematical instrument makers, in Cornhill, to great advantage. It reaches from the bottom of the staircase to a level with a workshop in the garret.

At Mr. Merlin's, too, I recollect having heard of an instance in which the principle is employed in a piece of mechanism set up since I was there. Discourse is carried on in whispers between two persons addressing themselves to two heads set up at the opposite ends of a long room. There must therefore be two angles made; two perpendicular tubes inserted into an horizontal one.

It is curious to think what a length of time an idea may lie, without receiving some of its most obvious as well as useful applications. For how many centuries was the art of engraving for impressions practised to inimitable perfection on small stones, without its occurring to any one to apply it to plates or types upon a large scale!

trumpets. To an inspector stationed in the lodge, it is not indeed in every part of every cell that a prisoner with whom he may have occasion to hold converse will be already visible. But to render him so, there needs but an order summoning him to the grating; which order may be delivered to him through the local subordinate, from the inspection-gallery belonging to that story of cells.

Here may be observed the first opening of that scene of clock-work regularity, which it would be so easy to establish in so compact a microcosm. Certainty, promptitude, and uniformity, are qualities that may here be displayed in the extreme. Action scarcely follows thought, quicker than execution might here be made to follow upon command.

Turn now to the good Howard's Penitentiary-town, and conceive a dozen task-masters and turnkeys running on every occasion from one corner of it to the other and back again (little less than $\frac{1}{4}$ of a mile) to receive some order from the governor, the prisoners their own masters all the while.

Hither come the customers to such prisoners as exercise their original trades; at stated times to bring materials and take back work, and at most times to give orders. By the conversation-tubes, converse for this as well as every other permitted purpose, is circulated instantaneously, with the utmost facility, to the greatest distance. Even the intervention of the local inspector is not necessary: a call from a speaking-trumpet brings the remotest prisoner to the front of his cell, where he may be seen by the customer, as well as heard. Under each speaking-trumpet hangs a list of the prisoners to whose cells it corresponds. The names are on separate cards, which are shifted as often as a prisoner happens to be shifted from cell to cell. As to the two lowest stories of cells, converse with them may be carried on directly from the corresponding inspection-gallery.

The lodge may serve as a common room for all the officers of the house. Of its division into male and female sides, I speak elsewhere. On the male side, the sub-governor, the chaplain, the surgeon, and perhaps another officer, such as the head schoolmaster, may have each his separate apartment, divided, however, from the rest no otherwise than by a moveable screen, not reaching to the ceiling, and leaving free passage as well round the central aperture as round the inspection-platform attached to the surrounding wall.

In this same apartment, the officers, male and female, may take their meals in common. Room is not wanting. Why not, as well as fellows in a college? This surely would not be the least active nor least useful of all colleges. Too much of their time cannot be spent in this central station, when not wanted on immediate duty. No expedient that can help to bring them hither, or keep them here, ought to be neglected. The legitimate authority of the governor and sub-governor will here receive assistance, their arbitrary power restraint, from the presence of their associates in office. A governor, a sub-governor, will blush, if not fear, to issue any tyrannical order in presence of so many disapproving witnesses; whose opinion, tacit or expressed, will be a bridle upon his management, though without power to oppose and disturb it. Monarchy, with publicity and responsibility for its only checks: such is the best, or rather the only tolerable form of government for such an empire.

In Mr. Howard's Penitentiary-town, each officer has his house—all separate, and all out of sight and hearing of the prisoners. This latter arrangement may be the more agreeable one of the two to the servant; but which is the best adapted to the service?

The want of side windows, as in other rooms, will render it eligible at least, if not necessary, to make a provision of *air-holes* for the purpose of ventilation.

The supports to the surrounding gallery, as shown in the engraved plan, might, if made hollow, answer this intention, and save the making an apparatus of tubes on purpose. In this case, however, each support would require a horizontal tube inserted into it at right angles, which might run close and parallel to the conversation-tubes, immediately under the ceiling.

It is at the level of the ceiling that these air-tubes should discharge themselves into the lodge, and not at the level of the floor. In the latter case, they could not answer this intention without a continual blast, which in cold weather would be very troublesome. In the other way, the blast beginning above the level of the head, is directed upwards, and gives no annoyance. Health is not bought at the expense of comfort.

In giving the slope to the ceiling in manner above mentioned, I had two conveniences in view: ventilation and stowage. To ventilation, which is the principal object, a rectilinear slope in this case is more favourable, not only than a horizontal ceiling, but even than a coved ceiling or dome. Both would have left a space untraversed by the current: in the one case, the space would have been angular; in the other, there would still have remained some space for stagnant air, though lessened by the abrasion of the angle.

The reduction of the height of the ceiling at this part leaves a quantity of room, of which some use may be made in the way of *stowage.* From the area of the chapel, the floor must, as well as the ceiling below, have a certain degree of slope to afford the second story of cells a view of the minister. But the declivity in the ceiling begins, not under the *cir-*

cumference of that area, but much nearer the centre, viz. at the central aperture. Hence, after necessary allowance for thickness of floor and ceiling, there will remain a void space of considerable extent all round, the exact dimensions of which it is needless to particularise. Disposing the slope here and there in regular and gentle flights of steps, for the purpose of communication, in other places the thickness of 2 or 3 or 4 steps may be laid together, to receive drawers or presses.

A place still more convenient in proportion to the extent of it in the way of stowage, will be the space immediately underneath the inspector's platform in the lodge. It will serve for presses or drawers opening into the surrounding gallery.

A more considerable space runs from behind the two superior galleries, under the steps of the chapel-galleries to which they are respectively attached. Tools and materials of work, of which the bulk is not very considerable, will find very convenient receptacles in these several places, where they will be in readiness to be delivered out and received back, by being handed over the annular well, to the prisoners in their cells.

As to the mode of *warming* the lodge, it will be considered in the section so entitled.*

SECTION IX.

OF THE COMMUNICATIONS IN GENERAL.

UNDER the general name of *Communications* may be comprised—

1. The passages, and galleries serving only as passages.
2. Staircases.
3. Gates, doors, and apertures answering the purpose of doors.

None of these but are articles of very material concern in a prison.

In a Panopticon-prison, one general problem applies to all: to extend to all of them, without exception or relaxation, the influence of the commanding principle. Cells, communications, outlets, approaches, there ought not anywhere to be a single foot square, on which man or boy shall be able to plant himself—no not for a moment—under any assurance of not being observed. Leave but a single spot thus unguarded, that spot will be sure to be a lurking-place for the most reprobate of the prisoners, and the scene of all sorts of forbidden practices.

In an ordinary public building, there is a use in having the communications spacious and numerous: in a prison, they ought rather to be few and narrow. Convenience is the great object in the one case; security in the other. The fewer, the easier guarded; the narrower, the less force there can be at any given point to oppose to the commanding and defensive force of the prison. Nor will the sacrifice requisite to be made of convenience be found so great as might be imagined. In an ordinary public building, persons have occasion to pass in indeterminate numbers at a time, and the same person frequently. In a well-contrived and well-regulated prison, at least in a prison upon this construction, the persons who are to pass, and the times at which they have occasion to pass, are all foreknown and registered. Sacrifice, did I say? The reader has already seen much convenience gained, and I hope he will see scarce any sacrificed.

The objects that required to be attended to, in planning a system of communications for an establishment of this kind, were—1. The *ends* to be kept in view in the contrivance; 2. The places *to* and *from* which communications were to be contrived; 3. The persons and things *for* which the communications might be wanted.

The *ends* to be kept in view with regard to the prisoners, are principally four:—

1. Uninterrupted exposure to invisible inspection.
2. Inability to attack the keeper, or do other mischief.
3. Separation of the sexes, if both are included in one building.
4. Prevention of converse with prisoners of other cells, at times of passing to and fro.

The *places* in question are—1. The cells; 2. The inspection-galleries; 3. The inspector's lodge; 4. The chapel; 5. The warerooms; 6. The fire-places; 7. The yards.

The *persons* in question are—1. The prisoners; 2. The keepers; 3. Visitors to the head-keeper and other officers, on business or curiosity; 4. Visitors to the chapel.

The *things* in question may be reduced to the head of—1. Machines; 2. Materials for work; 3. Finished work; 4. Provisions.

SECTION X.

COMMUNICATIONS.

Prisoners' Staircases.

STAIRCASES for the prisoners are of course requisite from the bottom to the top of that part of the building which they are to inhabit: from the sunk story below the cells, to the upper story of the cells.

I make two sets of staircases, and but two—I put them into the dead-part—I place them in stories one over another, and not, as

* How to reconcile the use of the lodge as a dining-room with the purity of air necessary to the reception of company in the chapel? By making the Saturday's dinner the last meal, dedicating to ventilation the whole interval between that period and the commencement of divine service in the ensuing day.

was once proposed to me, winding all over the building—I place them in a line within the inner boundary or back front of the cells, yet not extending so far the other way, as to the exterior boundary or fore front.—I make them of iron bars—I make the flight of steps run in a direction parallel, and not at right angles, to the cell-galleries and inspection-galleries—I give them pulley-doors with warning-bells where they open into the galleries—I carry them down to the sunk story below the cells—I make them at the utmost not wider than the galleries.

1. I make two of them, partly to shorten in some degree the passage to each, but principally to provide for the separation of the sexes, if both are received into one building, as in a building of this kind they might be without inconvenience.*

2. I make no more than two. In a building for ordinary uses this number might be scanty; it is not so in such an one as the present. The occasions on which they will be wanted are few; they may be all known and numbered.†

3. I place the staircases of different stories in one pile, one over another, not in a spiral running round the building. In the latter case, the prisoners on each side would in their ascent and descent pass each of them by the cells of all the floors below his own. But such a perambulation would but ill accord with that plan of seclusion, which, from the mitigation given to it, may and ought to be adhered to with the greater strictness. On the plan here preferred, the perambulation, and thence the opportunity of converse, is reduced to its least limits.‡

4. I place them in the dead-part—1. Because by that means I do not make sacrifice of any of the cells; 2. Because I thereby bring them within reach of the governor, or sub-governor, or both, in such manner, that those officers may give an eye that way, without quitting for the purpose the projecting front, in which will be the principal abode of the one, and the occasional business of the other.

5. I place them within the interior boundary or back front of the cells, and consequently within the line of the cell-galleries. This I do, that the width of the cell-galleries in that part may afford sufficient landing-place, as well for a prisoner when he has opened the door leading to the staircase from the cell-gallery, as to an inspector in his way to the prisoners' staircase from the inspection-gallery, of which a little further on.

6. Instead of carrying them home to a line with the fore front or exterior boundary of the cells, so as to occupy the whole depth, I make them fall short of that line by a few feet—say four feet, exclusive of the thickness of the wall, and the apertures, corresponding to windows, that may be made in that thickness. In the space thus reserved, I put water-closets, at least for the governor's house on his side; more especially on his ground-floor.

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* See the Section on the *Separation of the Sexes.*

† 1. For meals they will not be wanted. The provision is hoisted up to the cells in trays or baskets, by cranes, one on each side—a tray for each story of cells. In each story, one or two prisoners distribute the contents among the cells. Two double cells being taken off by the dead-part, nine remain on each side, with an odd one in the middle: this makes, at two prisoners to a cell, to each story 20 messes to be hoisted up on each side; at three prisoners to a cell, 30.

There remains only airing-times as far as the prisoners are concerned. On week days, I air them by walking in a wheel without doors, [See the Section on *Airing*.] Airing times occur for each prisoner but twice in the twenty-four hours. Were it much oftener, the time employed in descending and reascending would not be altogether lost; it would go in part of exercise—a necessary article of regimen for sedentary employments, which, *cæteris paribus*, I prefer, for reasons hereinafter given.—[See Section on *Employments*].

Inspectors, keepers as such, have scarce any occasion to enter the cells. Stationed not more than twenty-five feet from the most distant part of a cell, and from the nearest not more than eleven, nothing but the occasion of taking a minute examination of some small object can summon them thither. Once a-day at most will be amply sufficient. The prisoners they let in and out of their cells, without quitting their own station, in manner hereafter described. They have, besides, for their separate use, if necessary, the lodge staircase for their lowest floor, and the company's staircases for the two floors above it.

For taskmasters as such, the occasion to use these staircases is but little more frequent. Their business lies in the cells: all day long, unless it be at meal-time, they will be in one or other of the cells. Raw materials may be distributed, and finished work collected, at stated periods, in the same manner as the provisions. This operation may be directed by the inspectors, without stirring from their galleries. If a taskmaster, as such, looks to it, it will be without going backwards and forwards on purpose, once upon his entrance upon his business, and once upon his leaving it.

With prisoners who work at trades they have been bred to, taskmasters will have nothing to do. In many instances, instruction may be conveyed from the inspection-gallery; and so far there are no taskmasters distinct from keepers.

In ordinary prisons, it requires resolution to be a keeper—a quality in which men who have been bred to sedentary trades are liable to be deficient. But in a prison where a keeper never need see a prisoner without either a wall, or a grating, or a space of seven feet between them, the most arrant coward need not fear being a keeper: courage is almost a superfluous virtue.

‡ The prisoners of a cell nearest the staircase have no cells at all to pass by: those of a cell the most remote, but *nine*. Their instructions are—not to stop or speak as they pass: and for the observance of that rule, effectual security is provided, as will be seen under the head of *Airing*, as also a little below.

In this recess he commands, without being seen, a view of the staircase, by which means he is *necessarily* obliged, as well as without trouble enabled, to give a look into the prison once a-day at least, at uncertain and unexpected times. The ground-floor is more peculiarly adapted to this purpose, since from that station his chance of getting a sight of the prisoners, as they ascend and descend, extends to the inhabitants of every story of cells in the semicircle on that side: whereas on a superior story the chance would not extend to such of the prisoners, whose cells were situated in any inferior one.

7. The staircases are of iron bars, and not of brick or stone—1. That they may be the more airy; 2. That one part may intercept the light from another as little as possible; 3. That the prisoners, as they go up and down, may be exposed as much as possible to view from the inspection-galleries in that quarter.

8. It is also for the latter reason that the flights of steps run parallel to the inspection-galleries. Had their course been at right angles to those galleries, the stairs being interposed, between the prisoners in their ascent or descent and the inspector's eye, would have screened them from his view.

9. The use of the pulley-doors, which, on opening, ring warning bells, is to give notice of the approach of a prisoner, upon an occasion mentioned elsewhere, to the inspector, who, by that means, is summoned to let him into his cell, and in the mean time to have an eye upon his motions.

10. I place the doors, as in a *protracted partition*, crossing the cell-gallery at that part in its whole width, and consequently terminating in a line with the balustrade; the door being hung on at the side nearest to the cells, and opening *from* the landing-place, behind which runs the staircase *upon* the cell-gallery, and not from the cell-gallery *upon* the landing-place. In this way, partly by the wall, partly by the mode of opening, the view is pretty effectually cut off, as between the prisoners on the staircase and those within the cells.*

11. In making the staircases at all wider than the galleries, there would be no use:—1. There can never be any occasion for conveying by the former anything that cannot pass along the latter. 2. There is not even so much occasion for width in the staircase as in the galleries, since anything that could not be conveyed by the staircases might be hoisted up into the galleries by the crane. 3. Anything that required greater width, might be conveyed, either by the lodge staircase or through the central aperture, to the inspection-gallery on that floor, and to the two higher floors by the chapel-visitors' staircases,—of which presently.

* If it were worth while, the view might be still more completely cut off, by adding another door parallel to the former, opening upon the landing-place.

SECTION XI.

COMMUNICATIONS—INSPECTORS STAIRCASES.

As to the keepers, inspectors, or taskmasters, there are three sets of staircases, of which they may have the use. The two first are the two sets of prisoners' staircases just mentioned: the other set is that composed of the lodge staircase on the lower floor of the inspection-tower, and the chapel-visitors' staircases in the two upper ones.

In addition, however, to the prisoners' staircases, there will be required for the inspectors, from their galleries, short passages or staircases of communication, traversing the intermediate area. These I call the *traversing* or *inspectors'* staircases.

To make the inspector's staircase, I proceed in this manner. At the side of the landing-place opposite to that in which I have placed the door, I carry the cellular partition-wall all the way up, not only across the region of the cell-galleries, but also across the intermediate area, so as to join the inspection-gallery. By this means, a solid opaque back is given to these staircases in every story; and a complete separation is made between the several piles of cells with their staircases, and the remainder of the dead-part. Parallel to this, and between this and the pile of staircase-doors, at the distance of about four feet, I place a thin partition all the way up, with blinded spying-holes running in the line level with the inspector's eye.

Between the two, run two narrow flights of steps, no more than about two feet wide each: by that which is nearest the thick partition, the inspector descends to that part of the prisoners' staircase which is upon a level with the inferior one of his two stories of cells; by the other, he ascends to that which is upon a level with the superior one: or *vice versâ*. Each flight of steps, upon its gaining the landing-place, is crossed by a grated door of equal width, made in the grating which on that site forms a boundary to the landing-place from top to bottom, and opening upon the landing-place. This door, which is kept constantly locked, the key being in the custody of the inspector, serves, when shut, to keep the prisoners from straggling out of their staircase over the inspector's staircases, to pry into the inspection-galleries. Being of open work, it affords the prisoners in their staircase a sight, it is true, of an inspector when crossing over to them on his staircase. But this transient exposure is no derogation to his omnipresence. To all who see him, he is present: nor is he absent with regard

to those who do not see him; since from his not being present where they can see him, viz. on his staircase, it does not follow but that he may be present at some other part of his station, from whence he may be viewing him, while he is himself invisible.

It is needless to dwell very particularly on the apertures which for the sake of ventilation may be made here and there in both these traversing partitions, as likewise in the interior transverse boundary of the staircase, from whence the thicker of those partitions is continued: the use of them is to give room for currents of air to pass in a horizontal direction, as well as in the perpendicular one.

Those which might be accessible to the prisoners, viz. those made in the partition-wall of the prisoners' staircase, are in dimensions not big enough to give passage to the body of a man or boy: situated out of the reach of the prisoners, they are closed by opening or sliding windows or shutters, capable of being opened and shut by a pole, to which the inspector has access, and the prisoners not without his leave.

SECTION XII.

STAIRCASE FOR CHAPEL VISITORS, AND FOR THE OFFICERS' APARTMENTS.

To the staircase for company resorting to the chapel, I allot the middle one of the five piles of cells in the dead-part. Of the lowermost of these half, the height is occupied by the upper part of the diametrical passage through the sunk story. The passage to this staircase, twenty feet in length, taking that for the depth of the projecting front, will be right over the above-mentioned diametrical one. To reach this elevation, there will be an ascent of 4½ from the ground, to be performed by seven or eight steps.* To light it, which can only be done from above, will require the sacrifice of the centre one of the five uppermost cells, the four others of which are destined for the infirmary. The reasons for using iron not applying here, I make this staircase of stone. Being in use only on Sundays for promiscuous company, and then for no more than four or five hours of that day, it may serve for the officers' apartment on each side: on which account, the expense of stone need the less be grudged.

By two passages, one over another, and crossing the intermediate area, it will distribute the different companies to their respective seats through the channel of the inspection-galleries. Of these passages, the lower one is upon a level with the area of the chapel; the upper one, upon a level with the uppermost inspection-gallery. The area of the chapel being 4½ feet below the level of the middlemost inspection-gallery behind it, the passage divides itself into three. The central part reaches the chapel-area without change of level, by a trench cut through the inspection-gallery to that depth: on each side of it is a flight of steps, seven or eight in number, by which such of the company as propose to sit in the lowermost of the two chapel-galleries will be conveyed through the inspection-gallery of that story to that elevation. The uppermost passage, having no area to lead to, will be uniformly on an elevation with the inspection-gallery and chapel-gallery, to which alone it leads. The inspection-galleries, encircling all round the chapel-galleries to which they are respectively attached, will discharge the company through doors made in any number of places that convenience may point out. The company who go to the area of the chapel will have an ascent of 13½ feet to make, to reach their destination; those who go to the lower gallery, 18 feet; those who go to the upper, 36 feet.

With the company's staircase and the passages attached to it, it may be objected that the prisoners' galleries and staircases possess an indirect communication. But so must every part of every prison, with every other, and with the exit. In the present instance, this communication is not such as can be productive of the smallest inconvenience, either in the way of danger of escape, or in the way of offensive vicinity with regard to the company. To make use of the company's galleries in the way of escape, prisoners must first have forced their way into one of the inspection-galleries. How is this to be effected? And at night, should they, after having forced the grating of their cells, attempt to force the door that opens from their staircase into the inspection-gallery, there they find the inspector, whose bed is stationed close to that door, that he may be in constant readiness to receive them. As to vicinity, the nearest part of the prisoners' staircases will be at twelve feet distance; nor will they be any of them on any part of those staircases at the time: the doors that open into them from the cell-galleries will then be locked. As to view, the prisoner's staircases are indeed open; but this only in front, and the company's staircases and passages are closed: nor will they see anything of the prisoners, till, from their seats in the chapel, they behold them at a distance on the other side of the intermediate area, ranged in order in their cells.

* This inequality is owing to the want of coincidence between the stories of the inspection-tower, and those of the surrounding cellular part —an irregularity produced by the contrivance of allowing two stories of the part to be inspected, to each story of the part from whence the inspection is to be performed.

SECTION XIII.

CELL-GALLERIES.

UNDER the name of galleries have been mentioned—1. The prisoners', or cell-galleries; 2. The inspection-galleries; 3. The chapel-galleries. It is only the first that come under the head of *communications*. The two others have been spoken of already.

Of the cell-galleries little need be said. Attached to the several stories of cells, they hang over one another, and over the grated passage, which but for its grating would form a part of the intermediate area. I give them four feet in width, with balustrades of about 3½ feet high. These fences should in height be of more than half that of a man, not only to prevent his falling over unawares, but lest a desperate prisoner should, by a mere push, have it in his power to throw over a keeper or fellow-prisoner: more than the height necessary to afford that security is superfluous, and it tends to reduce the size of the packages capable of being hoisted up from the intermediate area into the cells.

I make them of bars rather than solid work, for the sake of ventilation, and of iron rather than wood, for the sake of strength and durability.

Underneath the galleries runs the passage called the *grated passage*, of the same width with those galleries, but on a level with the intermediate area below, from which it is separated by a grating also of iron, and reaching from within the thickness of a man (or rather of a boy) of the floor of that area, to within the same thickness of the under surface of the lowermost cell-gallery under which it runs. Into this the prisoners are received upon their landing from the lowest staircase, instead of being turned loose into the intermediate area, where they would have unlimited access to the under-warehouses, and by introducing themselves immediately under the inspection-galleries, station themselves out of the reach of the inspector's eye.

Through this grated passage there must be doors, which may be of the same materials, to give access to servants, or prisoners employed as servants, to the fireplaces, and other offices under the cells. On each side of the diametrical passage there must be at least one pair of such doors, and there may be any greater number that convenience may require.

The form of the balustrades is not altogether a matter of indifference. On account of cheapness and transparency, the upright bars should be as few and as slender as the regard due to strength will allow. On account of safe custody, the form should be such, in every part, as to preclude a prisoner from taking a spring from them, so as to jump upon the roof of any of the inspection-galleries which, in a horizontal line, will in the nearest part be at not more than eight feet distance. On this account, the upright bars, instead of finding separate horizontal bars at bottom to meet them and afford them support in a line exactly under them, are inflected towards the bottom; and the perpendicular part and the horizontal being both in one piece, the former receives sufficient support from the latter, and the first transverse piece that presents itself capable of affording a man a treading place to spring from, runs two or three inches within a perpendicular let fall from the rail. Prevented in this way from rising to an upright posture by the overhanging rail, it would be impossible for the most active jumper to take the smallest spring; he would tumble directly down like a dead-weight. Such a configuration may often be seen in balconies, though given without any such view. On the same account, the rail, instead of being flat, should be brought to an edge, in such manner that the section of it shall exhibit a triangle, either equal-legged or right-angled; and if right-angled, with the right angle within side, so that the side opposite the right angle may form a slope too steep to spring from.

These precautions, which would neither of them cost any thing, seem abundantly sufficient: if not, there are a variety of ways in which the deficiency might be effectually made up; though perhaps not without some little inconvenience or expense.*

SECTION XIV.

DOORS.

THE only ones that need any very particular notice are the *folding-doors* that form the grating to the cells. These folding-doors open outwards: 1. Because by this means they may be made so as, when unlocked, to lift off the hinges, in order to give admittance to machines and bulky packages; and this, as I am assured by my professional guide, without prejudice to the security they afford: 2. Because the opening of them inwards would be productive of continual embarrassment, unless within each cell a space, equal to that required for one of the leaves to turn in, were left vacant and of no use. The two leaves I make unequal: the lesser something less than 4 feet, the width of the gallery; the larger will of course take the rest of the space, viz. about 6 feet. The lesser is the only one

* For instance, to crown the rail with spikes, which should be sharp and slender; or to let fall, from the bottom of the balcony above, a row of bars projecting in such a manner as to render it impossible for man or boy to stand upon the rail, in a posture sufficiently near to an upright one to enable him to take a spring.

I design to open on ordinary occasions: were it equal to the other, that is, were it about 5 feet, its excess of length, when open, beyond 4 feet (the width of the gallery into which it opens) would prevent its opening to an angle so great as a right angle; whereby the passage it would afford to bulky packages would be proportionally narrowed.

As to *locks*, those contrived by the Rev. Mr. Ferryman, for the late Mr. Blackburn, and by him made use of in the construction of the Gloucester gaol, I trust to, upon the report of that ingenious architect, as incapable of being picked: as such, if they are not dearer than ordinary ones in a proportion worth regarding, they will of course demand the preference. But the inspection principle, without detracting anything from the ingenuity of the invention, takes much from the necessity of that and many other prison contrivances. For in a Panopticon, what can be the necessity of curious locks? what are the prisoners to pick them with? by what means are they to come at any sort of pick-lock tools, or any other forbidden implements? And supposing the locks of these doors picked, and the locks of more than one other set of doors besides, what is the operator the better for it? Lock-picking is an operation that requires time and experiment, and liberty to work at it unobserved. What prisoner picks locks before a keeper's face?

An appendage which will have its use in the instance of every door to which the prisoners have access, is a *warning-bell* attached to it in such a manner as to ring of itself upon every opening of the door. The door should likewise be made to shut to of itself, for instance, by the common contrivance of a weight with a line passing over a pulley. By the former of these implements, the attention of the inspector is drawn upon the prisoner; by the latter, the prisoners are prevented from rendering the bell useless by leaving the door open by design or negligence.

SECTION XV.

DIAMETRICAL PASSAGE.

On the sunk story, right through the centre of the building, and leading from the approach through the centre of the projecting front, runs the only thorough passage, called the *diametrical passage*. It serves for the following purposes:—

1. Admitting the officers of the house and visitors into the inspector's lodge; 2. Admitting machines and bulky packages into the annular area, from whence they may be either conveyed into the store-rooms on that floor, or by pulleys or cranes hoisted up into the store-rooms in the roof over the cells.

Lengths of the Diametrical Passage.

	F
From the door in the projecting front, to the circumference of the exterior circle of the cellular part—say . .	20
From the circumference of the great circle to the exterior circle of the intermediate area, viz. that part of it over which run the cell-galleries, .	17
N. B.—Here it meets the light from the sky-light that crowns the intermediate area.	
From the outer to the inner circumference of the intermediate area, . .	11
From the inner circumference of the intermediate area to the circumference of the central aperture in this story,	26
N.B.—Here it again receives the light in like manner from above.	
From this anterior part of the circumference to the posterior part, . . .	12
From the posterior part of the circumference o the central area, to the inner circumference of the intermediate area on the other posterior side, . . .	26
N.B.—Here it again receives the light.	
From thence to the interior circle of the grated passage under the cell-galleries on that side, ...	7
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Here it is cut into three, in a manner that will be described in speaking of the *exit*. On the left hand of the diametrical passage is a *staircase* leading to the inspector's lodge.

On the details of this staircase, with regard to situation, dimensions, and form, it is neither easy nor necessary at this stage of the design to make a fixed decision. They are left very much at large by the governing principle, and convenience on this head will depend in good measure on local circumstances, such as the form and dimensions of the under warehouse against which the staircase will abut, and the form and dimensions of the officers' apartments on that side, in or near the projecting front.

The form which in a general view appears most advantageous, is that of a straight and simple flight of steps without return or curvature. The convenience of a return is, that half the room is saved; the inconvenience of it is, that the space a man has to traverse, in order to reach a given point, is augmented to the amount of what would be the whole length of the staircase if laid out in a right line. The point, however, at which it terminates and opens into the lodge, should at least not go much beyond the central point of that apartment, lest, through ignorance or design, access should be gained to the inspection-gallery, and thence to the cells, by visitors to whom such privileges might not be thought fit to be allowed.

Regularity would require, but convenience does hardly, that on the right hand of the passage there should be a similar staircase.*

At the line where it falls into the anterior part of the central area, the diametrical passage is crossed by a pair of folding-gates of open iron-work, occupying its whole width. These gates prevent promiscuous visitors from advancing any farther, and straggling either into the warehouse on each side, or the posterior part of the intermediate area.

Before it reaches this transverse gate, it receives no side doors on either side. Such doors, if opening into the anterior part of the intermediate area, would require porters to guard them; if into the warehouse, viz. the space between the intermediate and central area, they would render it less safe to make use of the labour of the prisoners in that part of the building.

The pavement of the diametrical passage being upon a level with that of the annular area, and the exterior surface of the crown of the arch level with the floor of the lowermost inspection-gallery and that of the inspection-lodge, the *height* of this passage will be in the clear about 11 feet, and including the thickness of the arch, 12 feet.

In the floor of the lodge the central aperture will in the day be in general left open, in order to give light to the central area. At bed-time, it might either be closed for warmth, or left open for security; in order to expose to the view and offensive force of a keeper lying with a light in the lodge, any prisoner or prisoners, who, contrary to all human probability, should have made such progress in a project of escape, as to find themselves in a situation to make an attempt upon the transverse gate.†

At the foot of the staircase to the lodge might be a *door*, the opening of which should ring a *warning-bell*, to advertise the inspector of the approach of visitors as he is sitting in his lodge. In consideration of this security, added to that of the porter stationed at the entrance into the approach, the front door, opening from the approach into the diametrical passage, need not be locked; nor will any such person as a turnkey, or porter to the house, be necessary. At the foot of the staircase, visitors might be stopped from proceeding farther without ringing a bell and obtaining the assistance of the inspector in the lodge, which by the help of known contrivances he might afford without stirring from his seat.

To protect the lodge, when thus thrown open, from the cold blasts of a thorough passage, it will probably be thought necessary to add to the grated gates above mentioned, a pair of close folding doors; as likewise a similar pair of doors on the opposite or posterior side of the central area. With this defence from cold, there need be the less scruple about stationing a keeper to sleep in the lodge, with the central aperture open in the floor.

* The right-hand side of the prison being for males, requires the most watching and the greatest resort, as well on account of numbers as of sex. Hence I make this side of the lodge the principal one for the abode of the officers, and for the reception of customers and other visitors. It is therefore on the other side that the room for the staircase can best be spared.

† The cover for the central aperture might be so constructed as to form, when lifted up on hinges, a parapet, answering the purpose of a balustrade, each quadrant turning upon a hinge at the circumference. There would only need a few bars to hook on horizontally, to complete the circuit. Or, though the aperture were circular, the cover to it might be square. A central piece to lift off, of 4 feet diameter in the one case, or 4 feet square in the other, would reduce the height of the parapet to 4 feet.

SECTION XVI.

COMMUNICATIONS—EXIT INTO THE YARDS.

THE exit into the yards is one of the nicest parts of the anatomy of the prison.

The diametrical passage, when arrived at the anterior circumference of the farther side of the annular area, is absorbed by it: but recommencing at the posterior circumference, is there cut into three branches: a middle one, being a line of communication joining without discontinuance the inspection-gallery over-head to the *watch-house*, or *look-out*, that serves for the inspection of the yards; and two lateral ones, one on the male, and the other on the female side. Taking their common departure from the grating of the annular grated passage, they run on in parallelism, like a nerve, an artery, and a vein.

The nerve which conveys to the most distant extremity of this artificial body the all-vivifying influence of the inspection principle —the line of communication, I mean—at its origin in the inspection-gallery, preserves its level for some space; that is, so long as it hangs over the intermediate area, and till it reaches the region of the cell-gallery. While it does so, I call it the *inspector's bridge:* and, to distinguish it from a similar pass on the outside of the building, the *inspector's inner bridge*. At that line, in order to fall within the width of the grated passage, and get from thence into the arch that leads to the outside of the building, it makes a sudden drop.† Four feet being the whole width, two of them are allowed to form the slope at the descent,

† Of the making this sudden drop, instead of giving the line of communication in that part a regular descent, commencing at the inspection-gallery, one reason is, that it may not block up the intermediate area, and obstruct the introduction of bulky packages from the diametrical passage. Another use is, the forcing the inspector to take a view, in his descent, of the diametrical passage and the warehouses on each side, as will be seen presently.

the other two are allotted to give room for the inspector at the instant after his landing, and before any part of his body is within the arch.* The space occupied by the first two of these four feet I call the *inspector's drop:* that occupied by the other two, the *inspector's landing-place.* Under the lowermost story of the prisoner's cells, all round, runs a sunk story of cells, composed of arches of the same width and depth, but wanting a foot and a half of the height of those which compose the cells. That part of the line of communication which runs through and occupies one of these subterraneous arches, I call the *straits.* The whole width I divide into three passages: the middle one, being a continuation of the inspector's landing place, I call the *inspector's straits.* The two others, one on each side of the inspector's straits, receive the prisoners, and conduct them through the arch from the grated passage: these I call the *prisoner's straits.* The floor of the inspector's straits I make as much higher as the height of the arch will admit, above the floor of the prisoner's straits on each side: the reason is, that he may have the more commanding view of them, as he and they go out together. As a farther help, their floor may drop a step just before their arrival at this pass; and from thence it may sink a little further by a very gentle slope:† and the advantage would be increased by giving an arched form to the partition on the side of the prisoners on either hand, the curve bending *from* his side towards theirs. In this way, the advantage given him may amount to about 14 inches, a superiority which, taking into account the differences of height between man and man, seems to be as much as can be requisite. This superiority will be thus made out:—

	F.	IN.
Distance from the floor of the cell above (thickness of the arch included) to the floor of the grated passage beneath,	7	6
Fall of the latter floor by a step,	0	10
Total depth of the floor on which the prisoners tread, below the floor of the cell above,	8	4
Thickness of the above arch,	1	0
Space allowed in height for the inspector's passage,	6	1
Distance of the platform he walks upon below the floor overhead,	7	1
Distance of the floor the prisoners walk upon below the same level, as before,	8	4
Substract the inspector's distance,	7	1
Remains the height of the inspector's foot above that of the prisoners,	1	2

* Two feet is no great thickness: but a man of greater corpulency is certainly not fit to bear an executive part in the government of a prison.

† This slope would have the farther use of facilitating the carrying off the water employed in washing the intermediate area.

In point of *width*, the line of communication, at its origin from the inspection-gallery, and before it reaches the entrance of the arch, has no particular limitation:‡ but at that pass, which I call the *straits*, it must conform to the dimensions which the width of the arch allows, after reservation of a sufficient space for the prisoners on each side. If anything like difficulty occur anywhere, it must be at the very entrance into the arch, since from that pass it widens gradually to the exit. Ought the width of all three passages to be alike? or should any, and which, have the advantage in this respect over the other two? The occasions on which inspectors will have to pass one another will occur but rarely: but in the instance of the prisoners, these occasions will be still more unfrequent. On week days, twice a-day each prisoner descends to the airing-wheel: but should they descend even in pairs, or three's, they would not cross one another at all; for one does not quit the wheel till another has arrived there. Neither on Sundays is there any occasion for them to cross, at least at this particular spot: and all *their* motions may be predetermined and provided for. Restraint is suitable to their condition; freedom to that of the inspector. A confined space will have the further use of cramping any exertions a prisoner might be disposed to use, in the view of bursting in upon an inspector when engaged in so narrow a pass, with a partition between them of so little thickness.

Here follows, then, an example of the dimensions, in point of width, that might be given to these passages:—

	At the entrance into the Arch.		At the exit from the Arch.	
	F.	IN.	F.	IN.
Clear width of the space for the male prisoners' passage, on the right hand side of the inspector's passage,	2	6	4	2
Thickness of the partition of the inspector's passage,	0	7	0	7
Clear width of the inspector's passage,	3	10	4	0
Thickness of the partition of the inspector's passage on the female side,	0	7	0	7
Clear width of the female prisoners' passage,	2	6	4	2
	10	0	13	6

Upon this view, the widths capable of being allowed are so much beyond what is absolutely necessary, as to leave a considerable latitude of choice.‖ The partitions may

‡ Except with reference to the opposite cell; of which it covers from a direct view, a width equal to its own. On this account, the narrower the better.

‖ If they were not, the arch thus allotted to receive the line of communication might be made wider than the rest, upon the condition of giving the same extra width to that whole pile of arches all the way up.

accordingly be made more or less thick, according to the nature of the materials. When the inspector's passage, having gained the region of the yards, assumes the name of the *covered way*, the partitions which bound it will naturally require the strength and thickness of a wall; while the prisoners' passages, having no longer any part of the building to bound them, will require each of them a wall on purpose, as will be seen under the head of *Outlets*.

To give the inspector his possible view of the prisoners as they pass, there must, of course, be *sight-holes*. They may be closed with glasses. They ought to be conical; narrower on the inspector's side than on the prisoners' side. Though these holes should on the different sides be on the same level, they will not yield to the eye of the prisoner the thorough light: for they are considerably above his eye, and no line drawn towards his eye, from any hole on the one side, would pass through any hole on the other: another advantage in sinking the floor of the prisoners' passage below the level of the inspector's passage. The wall of this passage, in the same manner as those of the inspection-gallery of which it is the continuance, should for the same reason be painted black: those of the prisoners' passages, for the opposite reason, kept as white and as glossy as possible.

The least convenient part of the whole is the *inspector's drop*.*

But out of this very inconvenience I extract a superior advantage. The descent is by a sort of ladder, deviating so little from the perpendicular as to oblige a man, in order to find footing as he goes down, to turn his face *to* instead of *from* the steps: in so doing, he gets, and is obliged to get, a view of the diametrical passage and the warehouse on each side; such as it would have been difficult to have given him by any other means. A rope or bar to hold by on each side saves him from all danger, and even from all inconvenience, beyond that of being obliged to turn himself half round.

A few inches below the level of the ceiling of the diametrical passage, is a *sight-hole* in the partition that forms a back to the steps: through this, as he descends with his face to the ladder, he gains a full view of that passage: and on each hand another sight-hole, through which he gains a view equally full, through correspondent apertures, of the inside of the warehouse on each side.† By this means, the labour of the prisoners may be made use of with the less scruple in all those stations, without the necessity of stationing along with them in each place an inspector on purpose, and yet without departing in this, any more than in any other instance, from the principle of omnipresence.

As to the *relative width* to be given to this line of communication in its different parts, it admits of considerable latitude. The most natural course is to give it the same width throughout. In its whole width, whatever that be, it blocks up, not only the whole of the opposite cell of the first story of cells, but even a part of the height of the second story: filling up the place of the cell-gallery in both instances. To give a passage round from the cell-gallery on one side to the cell-gallery on the other, requires some little contrivances, with relation to which it is not necessary to be either very particular or very determinate. In the upper one of the two stories, the obstruction may be obviated, partly by lowering the ceiling of the line of communication in that spot; partly by giving a step or two from the cell-gallery on each side, to carry the passenger in that spot across and over the obstruction: in the lower one of the two stories, by cutting out of the cell, all round the obstruction, a space sufficient to make a passage of equal width with the cell-gallery, viz. four feet.

It is scarce necessary to observe, that in order to maintain in this part the limitation set to the prisoners' path, and to prevent them from straggling into the intermediate area, or clambering up the line of communication, so as to get at top of the inspection-gallery, or force their way in at the windows, the grating of the annular grated passage must, in its form, be governed by the configuration of the parts in question, and apply itself to them with particular care: and where any part of the line of communication is within reach of the prisoners, either walking in their passage or abiding in their cells, it should be of materials equally impregnable.

SECTION XVII.

EXTERIOR ANNULAR WELL.‡

ALL round the polygonal part of the building, runs an annular trench, which may be called the *Exterior Annular Well*, and its floor the *Exterior Annular Area*. In width I make it 12 feet; less than that not being sufficient to afford length enough to the line of communication in that part between the inside of the building and the look-out in the yards.‖

* Two feet only in width, to 11 feet 7 inches descent, leaves, at the large allowance of nearly one foot for each step, little more than two inches projection of each step beyond the one above it.

† The warehouses are laid out, as far as convenience admits, in such a manner as to favour this view, upon the *radial* principle, as explained under the head of *Outlets*.

‡ This well, except in its width, is but little different from the sunken wells or areas which are so common in the front of the London houses.

‖ See Section *Outlets*. It might even be wider

The floor, for the sake of carrying off the water, is 8 inches lower than the floor of the prisoners' passage through the building, which, as mentioned in speaking of the exit, is itself 10 inches below that of the *interior* annular well.*

It is bounded all round by a *wall*, which, after serving for the mere support of the earth from the area below to the surface of the ground above, is crowned by a parapet, reaching about 4 feet above that surface. This 4 feet added to the 7½ feet, and the 1½ feet, *i. e.* tc the 9 feet, makes 13 feet, the height which a prisoner who had let himself down into the well would have to climb up before he could gain the yards.

It is filled up and cut through in one part only, viz. at and by the line of communication above mentioned, running in the same direction with the diametrical passage.

The uses of it are as follow:—

1. To give light and air to the sunken story under the cells.

2. To prevent prisoners from escaping, upon the supposition of their having let themselves down from the windows. It answers in this point of view the purpose of a ditch in fortification on the outside of the building, in the same manner as the intermediate well that runs parallel to it in the inside.

3. To reduce the ascent which the chapel-visitors have to perform in order to gain the chapel, and to afford a place for a kitchen and other such offices to the governor's house, without sacrificing a ground-floor to that purpose, and lodging him and his family at an inconvenient height.

4 To afford all round a commodious place for cellaring, capable of being enlarged indefinitely as occasion may arise.

Were there no such trench cut on the outside, what would be the consequence?—Either—

1. The building remaining in all other particulars the same, the ground must be brought close to it all round;—or,

2. The story under the cells must be omitted altogether, as well in the cellular part as in the inspection-tower;—or,

3. That story must be raised above ground, and the whole building made so much higher.

In all three cases, the 2d and 4th of the above advantages would be lost. A prisoner who had let himself down from any of the windows would find nothing capable of preventing him from going on to the exterior wall: the convenience of cellaring would be lost: and, the floor of the lowest story of cells being even with the ground, there would be nothing to hinder the prisoners in the yards from holding promiscuous converse with the prisoners on that story of the cells.

In the first case, too, the space under the cells would be reduced to the condition of mere cellaring: not fit for any person to abide in, or pay frequent visits to, on account of the absolute want of free air; debarred in a great degree from the light, of which the intermediate well would at that depth afford but a very scanty measure. The warehouses under the lodge would likewise suffer in point of ventilation, by being deprived of the draught which might be occasionally made by throwing open the windows of the rooms under the cells, at the same time with the doors opening from them into the intermediate area.

In the second case, there would be no place for lighting fires under the cells; no place for warehouses anywhere; no means of conveying the prisoners into the yards, without giving them the faculty of promiscuous intercourse, by carrying them in their passage to and from their staircases abreast of every cell in the lowermost story of cells. There would be no diametrical passage; no means of conveying bulky articles into the cells and store-rooms overhead, through the intermediate area; and that most indispensable of all apartments—that vital part of the whole establishment—the inspector's lodge, would be cut to pieces and destroyed.

In the third case, which is the least unfavourable one, the second and fourth, of the above advantages, as already mentioned, would be sacrificed, as also the third: 8 feet would be added to an ascent already greater than could be wished; and no advantage worth mentioning would be gained.†

SECTION XVIII.

WINDOWS REACHING LOW, AND GLAZED; INSTEAD OF HIGH UP, AND OPEN.

BEING informed, that in a building of this height, and consequently of this thickness, glass would not cost more than wall, my instructions to the architect were, *Give me as much window as possible; provided they are not brought down so low as to render it too*

without inconvenience, and without any objection but the extra expense, which is only that of digging and paving. This degree of width, it is true, is not absolutely necessary anywhere else than close to the line of communication, to afford room for it to rise by a staircase to a level with the ground. But on account of light and air, it were better not to narrow the area anywhere else.

* Total, 18 inches lower than the interior well. It may be brought to this depth from 12 inches by a gentle slope.

† The quantity of building would be the same; and the saving of the small expense of digging would be at least counterbalanced by the additional expense of scaffolding and workmen's loss of time in ascending and descending. The only saving would be that of the sunk wall of 9 feet high for the support of the ground—a purpose for which the slightest thickness of walling would be sufficient.

cold. In consequence, I have two windows in each cell: each 4 feet wide and 5 feet high.

It was Mr. Howard that first conceived the prevailing antipathy to glass: it admits prospect, and it excludes air. Prospects seduce the indolent from their work: air is necessary to life. On any other than the Panopticon plan, the antipathy may have some reason on its side: on this plan, it would have none. Blinds there are of different sorts which would admit air, without admitting prospect: glazed sashes when open will admit air. But blinds, as soon as the inspector's back was turned, would be put aside or destroyed; and windows would be shut: for the most ignorant feel the coldness of fresh air, and the learned only understand the necessity of it to health and life. True: but in a Panopticon the inspector's back is never turned. In this point, as in others, who will offend, where concealment is impossible?

In Mr. Howard's plan, observe what is paid for shutting out prospects. The tall must be kept from idling as well as the short; and a tall man may make himself still taller by mounting on his bed, or standing on tiptoe. Therefore, windows must not begin lower than seven feet from the floor. But above this seven feet there must be a moderate space for a hole in the wall called a *window:* partly for this reason, and partly to make sure of sufficient height of ceiling, a cell must be at least ten feet high in the inside. Such accordingly is the construction, and such the height, of the cells at Wymondham.*

To what climate is this suited? To the East or West-Indies; perhaps to some part of Italy; certainly not to any part of our three kingdoms. To what employments? To laborious employments—to employments that are to be carried on out of doors; to few that in such a place can be carried on within doors —to few indeed that can be termed sedentary ones. What weaver, what spinner, what shoemaker, what tailor, what coachmaker, can work with drenched or frozen hands?

To mitigate the cold, and to exclude snow and rain, Mr. Howard allows a wooden shutter. But to do this, such a shutter must exclude light. What is the wretched solitary to do *then?* creep into his bed, or sit down and pine in forced and useless indolence.

Mr. Howard, with all this, allows no firing. One would think from him there were no winter.

The thicker walls are, and the higher above the floor holes in the wall instead of windows are, the better they serve to keep out cold and rain: hence another reason for piling bricks upon bricks, and giving rooms in prisons the height of those in palaces.

In rooms that have no light, that is, not three or four feet above the eye, weaving can scarcely be carried on: from such rooms, that profitable employment, that quiet employment, in other respects so well suited to an establishment of this kind, is therefore in all its infinity of branches peremptorily excluded. For this, therefore, among other reasons, there must be other places for working in. Accordingly, at Wymondham, for 50 feet 4 by 14:8 of cells, you have on one part 20:6 by 10 feet of work-room;† and in another part, a work-room of the same dimensions for only 29 feet 4 by 14 feet 8 of cells.‡

At Wymondham, these holes are guarded each of them, inside and out, by a double grating: a single one under the eye of an inspector is enough for me. Were a prisoner to elude this eye (though how he is even by night to elude the eye of a watchman, constantly patroling, I do not know,) and get through this grating (though how a man is to force iron bars without tools, I am equally at a loss to conceive,) where will he find himself? In the yards? No, but in a well, in which he has a wall of 13 feet high to climb, as we shall see, ere he can reach the yards. And were he over this wall, where would he be then? In a space inclosed by another high wall, with three centinels in an inclosed walk, patrolling on the other side.

So far from there being any need of double gratings, the single grating need not have cross bars. It is not necessary it should be capable of resisting either long-continued attempts, or violent ones.‖

If anywhere, in any particular pile of cells, any unguarded circumstance in the construction afforded the means of descent otherwise than by climbing down instead of dropping, advantage could not be taken of the weakness from any other pile in the circuit: in the polygonal form, the projecting angles render-

* See Sir T. Beevor's Letters in Annual Register for 1786, Letter III.

† Viz. a little less than one third addition.

‡ Viz. a little less than one half of addition.

‖ There would be an advantage in placing it as near to the outside of the wall, and by that means as far from the inside of the cell, as it can be, consistently with strength; that is, so as not to be liable to be thrown down by a push, together with the brick-work or stone in which it is bedded. Why? Because by this means so much room may be gained to the cells—the pier under each window forming a kind of dresser answering the purpose of a table.

Above the third story of cells, bars can hardly be deemed necessary. The window of the lowest being 10½ above the sunken external area, the following table shows the heights from which a fugitive would have to drop from the respective windows upon a stone pavement: it being taken for granted that the cell affords neither a rope, nor materials of which a rope could be made in the compass of a night, by persons exposed, occasionally at least, if not constantly, to the eyes of a patrolling watchman:—

Lower story,	10 f.	6 in.	Fourth story,	37 f.	6 in.
Second story,	19	6	Fifth story,	46	6
Third story,	28	6	Sixth story,	55	6

ing it impossible to climb horizontally on the outside, from a window of any cell to any window of the cell contiguous on either side.

If fastened up in two places on each side, and in the middle at top and bottom, the gratings may want about 7 inches of reaching the brick work at bottom, and about ten inches of reaching that at top; especially if they terminate at top and bottom, not in a horizontal bar, but in a row of perpendicular spikes: by this means, little more than 3½ feet in height of grating will serve for a window 5 feet in height; and in width little more than 2½ feet of grating will serve for 4 feet.

Among the offenders who are liable to be consigned to these scenes of punishment, it is but too common to see boys of little more than ten years of age. A thin person, boy or man, can generally get his body through, wherever he can pass his head; that is, if not hindered by the breadth of his body, he will not be by the thickness. But a person cannot press against the point of a spike, as he could against a bar. From these *data*, gratings might be formed, requiring a much less quantity of materials than what is commonly employed, yet of sufficient strength for the present purpose.

SECTION XIX.

MATERIALS.

Arched Work—Much Iron—Plaster Floors.

THE peculiarities of the present plan are not confined to the head of construction: they extend in some degree to the *materials*. The abundant use made of *iron* will hardly fail to be observed.

In preferring brick or stone-work to wood, and in consequence arches to other partitions, it does no more than follow the plans already in vogue. Such a mode of construction is more particularly necessary in a Panopticon, than in a building of perhaps any other form. The circumstance that renders it so peculiarly favourable to ventilation, renders it of course equally exposed, if made of combustible materials, to accidents from fire. Were a fire to begin anywhere, especially towards the centre, it would spread all round — the wind would pour in from all quarters — the whole would be presently in a blaze—and the prisoners, being locked up in their cells, and even were their cells open, deprived of all exit except through one or two narrow passages, would be burnt or suffocated before any assistance could be applied.

This at least would be the case were it not for the care taken to keep accumulated a large fund of water in the cistern at the top of the building, ready to be poured in whenever and wherever there may be occasion for it. But notwithstanding this assistance, and the great security against all such accidents afforded by the circumstance of unremitted inspection, as a building of this sort is designed for duration, and the difference in point of expense need not be considerable, it seems best to be on the safe side.*

The great use here proposed to be made of iron has been made on different occasions with a view to different advantages: sometimes to admit air, sometimes to save room, sometime for the sake of strengh. In all instances, it has the advantage of being peculiarly impregnable to putrid contagion — even plaster, brick, and stone, not being in this respect altogether above reproach. Hence the great stress laid on frequent white-washing, wherever any of the three latter materials are employed.

It is partly on account of the admission it gives to air, that I prefer it for both the prisoners' staircases, and for all their galleries. In arched galleries of brick or stone, besides that they would take up room, the air might be apt to stagnate. Substituting open-work to such close materials, adds in effect so much in width to the annular well. The interstices between the bars, instead of forming an obstruction to a current of air, serve rather to accelerate it.

It was the consideration of the little room taken up by this material, that suggested it to me as peculiarly well adapted to the purpose of affording supports to the chapel. Brick pillars, of the thickness necessary to support so lofty a building, would afford a very material obstruction to the voice in its passage from the minister to the prisoners, when stationed in their cells, or in the galleries before their cells. It is on the same consideration, likewise, that I propose to make considerable use of it in the construction of the inspection-galleries. It is to obtain both these advantages, that I make use of no other material for one entire boundary (viz. the interior one opposite the windows) of every cell.

To obtain that sort of strength which consists in inflexibility, with less unwieldiness, and at a less expense of materials, it occurred to me to make the pillars hollow. Being of iron, they may thus be made not only to take up beyond comparison less room, but even to possess greater strength, even when hollowed to such a degree as not to exceed brick

* In a panopticon which required apartments of greater width than could conveniently be given to arches, some of the other modes of securing buildings against fire might be adopted; such as that of stopping the draught of air by iron plates, upon Mr. Hartley's plan — or by simple plastering, upon Earl Stanhope's. Such superior width might be necessary in some manufactories: nor would it be incongruous to the object of the institution, where seclusion was out of the question, as in free manufactories and poor-houses.

or stone in weight. It occurred to me, that iron was cast in large masses to serve for water-pipes. Upon inquiry at a great foundery where it is cast for such purposes, I learnt that in that manufactory it could be cast hollow for a length of 12 feet, but no more. Upon consulting with my professional adviser, I was informed that that length could be made to suffice; and it occurred to him, that of the eight supports which would be a sufficient number for such a building, some might be made to answer the purpose of water-pipes for conveying the water from the roof; and to me, that others of them might be made to serve for chimneys — articles for which it might otherwise be not altogether easy, in a building of so peculiar a construction, to find a convenient place.

In point of economy, I hope to find this useful material not more expensive, but rather less so, than the quantity of stone or brick-work that would be requisite to answer the same purpose;* since cast-iron, and, in most instances, even that not of the finest quality, would answer as well as hammered, with half the expense.

It is at the recommendation of the same intelligent artist that I adopt those called stucco or *plaster floors*, in preference to any other; and this for a variety of reasons: —

1. They are incombustible. In this respect they have the advantage of wooden floors.

2. They take up very little room. The thickness of 1½ inch over the brick-work at the crown is sufficient. In this point they have the advantage over all other floors, and most of all over wood, which, besides boards, require joists to lay them on.

3. They are uniform, without crevices or interstices. In this respect they have also the advantage over all other floors: in the highest degree over brick, then over wood, and even over stone. The inconvenience of crevices and interstices, as is well remarked by Mr. Howard, is to harbour dirt, and occasionally putrescent matter, capable of fouling the air, and affording ill scents.

4. They are cheap: when thus thinly laid, much cheaper than wood, or stone, or even than any choice kind of brick, such as clinkers; and full as cheap as any tiling that would be proper for the purpose.

5. They are, it is true, liable to crack, especially on the first settling of the building. On the other hand, if a crack takes place, they are easily and effectually repaired.

Mr. Howard lays great stress on the unwholesomeness of such floors as, by their roughness, such as unplaned boards, or by numerous and wide interstices, are apt to harbour putrescent matter: but I know not that he anywhere recommends plaster floors, which are freer than any ordinary floors from that inconvenience.

* In Hughes' Riding Amphitheatre, near London, the supports, I am told, are of iron silvered.

SECTION XX.

OUTLETS, INCLUDING AIRING-YARDS.

ARE *airing-yards* to be looked upon as a necessary appendage to the building? If so, what *extent* ought to be given to them? Ought any, and what, divisions to be made in them, corresponding to so many divisions among the prisoners? In what manner may the influence of the inspection principle be extended to them to the best advantage? — The answers to these questions will depend partly upon the general plan of management in view, partly upon local circumstances.

Of these points, the first and third are considered under the head of management:† and the result is, that airing-yards to be used on working-days are not essential to the establishment; but that for Sunday's use they would be at least convenient: that if both sexes are admitted, one division, and consequently two separate yards, are indispensable: but that, as between prisoners of the same sex, the advantage to be gained by any further division seems hardly decided enough to warrant the expense.‡

Whatever be the extent of the airing-ground, and whatever the number of divisions made in it, two erections must at any rate be made in it, in order to extend to these exterior appendages the all-vivifying influence of the commanding principle: 1. A *look-out*, or *exterior inspection-lodge*; 2. A line of communication for prisoners as well as inspectors, between this look-out and the building. Let the look-out, then, be considered as occupying the centre of a circle: of this circle, the line of communication forms one radius: from the same centre may be projected, as *co-radii*, walls in any number corresponding to the number of divisions pitched upon.‖ See Plate III.

† See the Sections on *Employment*, *Airing*, and *Schooling*.

‡ The numerous yards in Plate III. are given only by way of illustration, and to show upon what principles the topographical division, were it to be judged necessary, might be formed to most advantage.

‖ In the magazine of expedients, the most simple is seldom that which first presents itself to our search. In the first hasty design, as sketched out in the Letters, it was by a surrounding gallery that the influence of the inspection principle was to have been extended to uncovered areas; and this gallery was to have been attached to the surrounding wall. The advantages of centrality were thus thrown away without necessity, and without any advantage in return. In point of expense, the disadvantage might be more, and could not be less, than in the proportion of a

In section 16 we left the line of communication at the spot at which, having cleared the building, it cuts across the external annular area. But at this spot it is considerably below the level of the ground in the yards through which it leads. The surface of the ground I suppose exactly on a level with the floor of the lowermost story of cells; which floor is 7 : 6 above the level of the intermediate area. The floor of the prisoners' passages, being 10 inches below the level of that area, has 8 : 4 to rise before it comes to a level with the surface of the ground. That of the inspector's passage, being five inches above the level of the same area, has consequently but 7 : 1 to rise before it comes to a level with the ground. But in the straits under the arch we gave the inspector the advantage in point of ground over the prisoners to the amount of 1 : 3; and for this advantage there is the same occasion in one part of the line of communication as in another. Adding, therefore, this rise to that of 7 : 1, which the floor of the inspector's passage has to make in order to reach the level of the ground, we have 8 : 4, which is the same rise as that given to the prisoners' passages. In this way the two floors preserve their parallelism during the whole of their course.

The particulars of this course may be thus made out: —

Prisoners' Passage on each Side.

	F.	IN.
Lengths—Exterior landing-place from the outside of the wall of the building to the commencement of the flight of steps which may be called the *prisoners' rising-stairs*, . .	2	0
Prisoners' emerging or rising-stairs, from the exterior landing-place to the *prisoners' bridge*, ...	8	4
Prisoners' bridge, from the prisoners' rising-steps to the *prisoners' lanes*, running parallel to the inspector's *covered-way*, on the surface of the ground through the yards, . .	1	8

Underneath this flight of steps there is ample room left in the exterior annular area, as well for passing as for conveying goods. Before it has advanced in length to within four feet of the wall bounding the external area, it is more than six feet above the level of that area in that part; and at the surrounding wall, 9 feet.*

Inspector's Passage between the Prisoners' Passages.

Lengths—The same as above: the difference, which is only in point of level, being the same throughout, except that, in this passage, the flight of steps gaining the level to which they lead a little earlier than in the prisoners' passage, the *inspector's bridge*† is a few inches longer than that of the prisoners'.

As to the floor of the prisoners' rising-stairs, iron seems preferable, partly for the reasons which plead in general in favour of that material, partly on account of the small degree of thickness it requires. A wooden floor, or a brick floor supported upon an arch, might reduce the height above the floor of the exterior well to such a degree, as to make it necessary either to sink the floor of the well in that part still more, or to increase the width.‡

From their immersion out of the building, the three passages should be covered through the whole length of their course across the external area: that of the inspector, for the sake of obscurity, as well as for the sake of protection in bad weather: the two prisoners' passages on each side, partly for the latter reason, but principally to cut off converse with the cells immediately above; for which reason they must also have a back reaching up all the way to the roof, so as to form a complete case.

When the prisoners have got the length of the lanes, or of the yards on each side, that is, at the least, near thirteen feet distance from the building, the interception of converse must, as it safely may, be trusted to the expedients employed for preventing those in the cells from looking out of their windows.

When the prisoners are a few feet advanced

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circumference to a semi-diameter—about six to one: and the galleries would have diminished in effect, to the amount of their height, the height of the wall to which they were attached.

* This comes from the pavement of the exterior area being sunk in that part 1 : 6 below the level of the internal.

† To distinguish it from that within the building, I call this the *inspector's outer bridge*.

‡ The roof of the line of communication, as it emerges from the building, affords a landing place to the windows of the cells immediately above, by which the prisoners, could they get out of the windows, might at night time find their way into the yards, and be so far on their way to an escape. To obviate this danger, it is evident that the gratings to those windows ought to be constructed with a degree of caution which would not be equally necessary in any other part of the circuit.

It would be tedious to particularize in this manner every little weak spot which the details of such a building may disclose. Wherever they present themselves, the weakness will not be more obvious than the means of remedying it.

The cell immediately over the straits loses, it will be observed, a considerable share of its light, partly by means of the inspector's bridge within side the building, partly by means of the whole line of communication on the outside. Many employments might be mentioned, for which the degree of light remaining after these defalcations, would probably be insufficient: but as employments are not wanting, for which it would certainly be sufficient, the deficiency affords no reason for considering this cell as lost to the purpose of habitation.

beyond the external area, they come to a door, which lets out upon the open ground such of them as belong to the two yards immediately contiguous on each side; since it would be useless to carry them on to the look-out, only to return them from thence into those yards. If there are no more divisions, no more yards, than these two, here the prisoners' lanes terminate: if there are other yards, the lanes lead on till they terminate in the common central yard encompassing the look-out. The inspector, at any rate, has his door corresponding in situation to those just mentioned.

The *central yard* is a circular, or rather annular yard, encompassing the look-out: it serves for the discharge of the different classes of persons into their respective yards. That the individuals thus meant to be kept separate, may not have it in their power to straggle into the central yard and there meet, the entrances into their several yards are closed by gates or doors. Lest by a mutual approach towards their respective doors, they should obtain an opportunity of converse, the doors are placed, not in the circumference where the walls terminate, but in a set of short partition-walls joining the respective walls at a little distance from the ends—the intermediate portion answering the purposes of the protracted partitions spoken of in Letter II. in the first rough sketch of the building. A wall carried through the central yard, so as to join the look-out, perfects the separation between the male and female side.*

Near to the lateral doors opening from the covered way on each side, will be the situations for the *airing-wheels:*† the numbers and exact situations of which will depend on local circumstances, and on the details of the plan of management pursued.

Hereabouts, too, might be the *temperate baths*, or *bathing-basons*, in which prisoners might at stated hours be obliged to wash themselves. By means of a slight awning, these baths might easily be concealed from the view of the prisoners in the building, while they were fully exposed to the observation of an inspector (or, according to the sex, an inspectrix) from the look-out.

Made long rather than circular, they would be the better adapted to the purpose of enforcing such a continuance in this state of discipline as should be deemed expedient. The prisoner being required to pass through from one end to the other, the number of traverses would thus afford as exact a measure as could be wished for, of the degree of discipline to which it were proposed to subject him.

Of the construction of the *look-out*, it seems hardly necessary to attempt a minute description. It should be polygonal, that form being cheaper than the circular. It might be an octagon; or, were the number of the airing-yards definitively fixed, the number of its sides might be the same with that of the yards, the walls of those divisions corresponding to the angles of the building. The fittest form and size for it would vary, according to local circumstances and the plan of management. The precautions relative to the *thorough light* need not here be so strict as in the prison; the greater distance rendering the figure, when obscured by blinds, more difficultly decernible: and the obscurity would be farther favoured by heightening the elevation. Experiment would easily show what sort and thickness of blind was best adapted to the purpose. If a strict inspection be required, the inspection-lantern already described would furnish a proper model: if a looser were deemed sufficient, a room employed as a work-shop in some sedentary trade, such as that of a tailor or shoemaker, might answer the purpose. In the capacity of apprentices or journeymen, he might have a few of the most orderly and trust-worthy among the prisoners. On working days, according to the plan of management here proposed, he would have nobody to inspect but such of the prisoners as were occupied for the time being in walking in the wheels: at that time he would of course front that way as he sat, and a casual glance stolen now and then from his work would answer every purpose. It is on Sundays, and on Sundays alone, that the prisoners in general would be at certain hours in the yards; and during those periods he might give his whole time and attention to the business of inspection, as it would then be his only occupation.

A male and female inspector might here also be stationed under one roof; whose inspection might, by the means explained in another place, be confined to their respective divisions. This junction and separation would of course be necessary, if a bath for females were placed near the walking-wheel on that side.

As to the degree of spaciousness to be given to the yards: in a general sketch which has no individual object in view, to specify dimensions will be seen to be impossible: principles, with illustrations, are the utmost that can be expected.

The objects to be attended to are, on the one side, *room* and *ventilation;* on the other, *facility* of *inspection*, and *cheapness*.

To estimate what may be necessary for room, it would be necessary first to settle the operations that are to be carried on in the yards, and the articles that are to be placed in them. Such are—

1. Airing-wheels: enough for supplying

* *N.B.* This protracted separation wall is not represented in the draught.

† See the Section on *Airing*.

water to the building. See the Section on *Airing*.

2. Additional number of airing-wheels: in the whole, a wheel (say) to every 18 persons, or a proportionable number of double, treble, or quadruple wheels. I call the wheel a single, double, treble one, &c., with reference to the number of persons that are to be set to walk in it at once.

3. Machines to be kept in motion by such supernumerary airing-wheels.

4. Bathing-basons, one or two, according to the sexes.

5. Open schools, for Sunday's schooling. See the Section on *Schooling*.

6. Walking or marching parade for Sunday's exercise.

As to ventilation, though a distinct object, it is one that will hardly require a distinct provision. A space that affords room enough for the walking-parade can scarcely be deficient in point of airiness.

In ventilation, much depends upon the form of the ground. A declivity is in this point of view preferable by far to a dead flat. Place the building upon a rising ground: the wall, though a high one, may be but little or not at all higher than the surface of the ground is for for some distance round the building. So far as this is the case, so far the walls afford no obstruction at all to the current of air.

But even in a dead flat, there seems little necessity for bestowing any expense, in giving on this score any addition to the quantity of space absolutely necessary for the marching exercise above alluded to. Noxious trades out of the question, the only imaginable sources of contamination to which the air is exposed are *putridity* and *respiration*. Against the former, sufficient security may be afforded by the discipline of the prison: — no hogs — no poultry — no dunghill — no open drain — no stagnant water. As to mere respiration, it can scarcely be considered as capable of producing the effect to a degree worth notice, in a place ever so little wider than a water-well, if open to the sky.

As to facility of inspection, it is obvious, that the longer you make your airing-yard, the less distinct the view which the inspector will have of a prisoner at the further end of it. But the consideration of the expense will be sufficient to put a stop to the extension of this space, long enough before it has acquired length sufficient to prejudice the view.

In speaking of the *expense*, I do not mean that of the ground; for that, everywhere but in a town, will be of little moment: but the expense of the walls. I speak not merely of the surrounding wall; for, whatever be the height of that wall, the separation-walls, if there are any, cannot, as we shall see, have less. For the surrounding wall, according to the common plans at least, no ordinary height will suffice. But, by doubling the height of your wall, you much more than double the expense; since, if you would have it stand, you must give it a proportionable increase of thickness.

The height of the separation-walls, I have said, must not be less than that of the surrounding wall: why? because if the former join on to the latter, they must be of the same height, or whatever height is given to the surrounding wall is so much thrown away. The attempt, if any, will of course be made at that part where the wall is lowest, which will serve as a step to any part which rises above it. Let a wall of twelve feet be joined by another of six feet: what is the obstacle to be surmounted? Not one wall of twelve feet, but two walls of six feet each. In fortification, the strength of the whole is to be computed, not from the strength of the strongest part, but from that of the weakest.

That the separation-walls should join the surrounding wall, is not indeed absolutely necessary; but whether the discontinuance could in any instance be made productive of any saving upon the whole, seems rather questionable. They may indeed be left short of it to a certain distance; the gap being supplied by a ditch, to which the persons meant to be separated on each side, may be prevented from approaching near enough for the purpose of converse, by a palisade, which may be a very slight one, being intended rather to mark transgression than to prevent it. In the daytime, there will be no possibility of approaching the ditch without detection, since it will be full in view: at night, there will be no motive, as there will be no persons on the other side to hold converse with — no prisoners in the yards. The ditch itself need not be continued far on each side of the wall: but the palisade must be continued all along; for if it were to terminate anywhere, it would be useless; and if it were to join the wall anywhere, it would take so much from the height. But the palisade, however slight, would cost something: and, what is more material, the space between that and the wall would be so much sacrificed; and the greater the space, the more extensive, and consequently more expensive, must be the wall. If, therefore, the surrounding wall should not rise much above the height, which for the purpose of preventing converse it would be necessary to give to the separation-walls, reducing the height of the latter by the help of the above expedient would not be worth the while.

But although no saving should be to be made in the height of the separation-walls, this is not the case with regard to such part of the general surrounding wall as is not accessible to the prisoners. What part that may be, will be immediately conceived by turning

to the draught—See Plate III. In a line with the projecting front, continue the wall of the building on each side till it meets the two lateral of the four surrounding walls. To this wall, and to every wall that is behind it, must be given the same extra height, whatever that be. But to whatever walling there is *before* it, no greater height need be given, than if there were no such thing as a prison in the case.

Thus much, supposing the necessity of high walls and multiplied divisions. But if my ideas be just, both these articles of expense may be saved: the former, by the mechanical regularity of the airing discipline — See the Section on *Airing*:—the other, by the mode of guarding — See the next Section.*

The less the space is between the look-out and that one of the four surrounding walls that runs at right angles to the direction of the covered way, the nearer the two radii drawn towards the ends of such a wall will of course approach to parallelism. Direct them so as to terminate, not in the opposite wall, but in the two lateral walls that join it at right angles, and you have a long space, which, without departing from the inspection principle, might, if the employment presented any adequate advantage, be converted into a *rope-yard*.

Why introduce here the mention of rope-making? Is it that I myself have any predilection for that business? By no means: but others, it seems, have. My first care is on every occasion to point out that course which to me appears the best: my next is to make the best of whatever may chance to be preferred by those whose province it is to choose. To a gentleman to whose information and advice upon this occasion particular attention appears to have been paid by a committee of the House of Commons,† to this gentleman it occurred that rope-making was of all trades one of the best adapted to the economy of a penitentiary-house. Of the many advantageous properties he attributes to it, a considerable number may, for aught I know, belong to it without dispute. But in one instance, at least, his zeal has got the better of his recollection. In rope-making, "no implement employed that can contribute to escapes!" — To a seaman, a rope is itself a staircase. Will any charitable hand take charge of it on the other side of the wall? over goes the rope one instant — the next, over goes the sailor.‡ And can no other hand support itself by a rope? Was La Tude a seaman? Will the walls of a penitentiary-house be like the walls of the bastile? A vigorous arm will supply the place of practice. I speak but what I have seen.

Rope-making is, perhaps, of all trades known, that which takes up the greatest space. Elsewhere it requires no walls: but here it must not only have walls, but those, too, of an extra height and thickness.

With all this, should any rope-making legislator, or any legislator's rope-making friend, make a point of it, in a Panopticon penitentiary-house, I would even admit a ropery. But in what character? as one of the most— no, but as one of the least promising of all trades. I would admit it — not certainly in the view of favouring, but rather of trying the strength and temper, and displaying the excellence of my instrument. I would take my razor and hack stones with it — not as thinking stone-cutting the fittest employment for razors in general, but in the way of bravado, to shew that my razor can perform what in ancient lore stands recorded as a miracle for razors. I would provide part of my prisoners with this gentleman's ropes; I would arm another part with another gentleman's sledge-hammers; a third part with another gentleman's cast-iron; a fourth with a fourth gentleman's saws, taking my chance for my felons serving their keepers as the children of Israel served the Ammonites.— For what? for security's sake? No: but just as I would set up a sword-cutlery, or a gun-manufactory with a powder-mill attached to it, if any gentleman would show me such a measure of extra profit attached to those trades, as should more than compensate the extra risk and the extra expense of guarding and insurance.

* It may be thought that the walls here spoken of as not requiring any extra height, might be omitted altogether. But besides that they will be convenient for the inclosing of offices and officers' gardens, they are essential to the plan of guarding. For on considering the centinel's paths, it will be easily seen that it is necessary they should be regular, and that one of them should pass by the approach. Add to this, that the contrivance of the approach supposes a wall all round, to serve as a barrier against a hostile mob.

One wall, indeed, which really is not only unnecessary but prejudicial, may be discovered on the draught; into which it was inserted without special instructions, as a thing of course, and suffered to continue through inadvertence.

It is that which runs parallel to, and between, the wall through which the entrance is cut, and that which forms on each side a continuation of the projecting front. A fence in that part is indeed necessary: but instead of a close wall, it ought to be an open palisade.

The former, in contradistinction to the latter, weakens the *command* of the building over the space inclosed; and that as well in a military sense, as in point of inspective force. Suppose a mob to have mastered the wall on either side the entrance, an open palisade exposes them to the ground floor of the building, whereas a close wall covers them.

† See Report of the Felon Committee, printed in 1779.

‡ Even without an associate, a rope, by the help of a brickbat fastened to the end of it, will, I have been assured, carry a man over a wall.

Protesting, therefore, against this of rope-making, as one of the least eligible of trades for any other prison, I would not, by any peremptory resolution, exclude even this from a Panopticon penitentiary-house. Let Euristheus speak the word, and I will turn in serpents to my infant in its very cradle.— Why? Is it that serpents are the best nurses? No: but because my infant is an Hercules.

Recapitulation of the Horizontal Lengths of the several component parts of the Line of Communication between the lowermost Inspection-gallery within the building and the Look-out in the yards.

I. *Inspector's Passage.*

	F.
1. Inspector's *Inner-Bridge* (over the intermediate area,)	8
2. Inspector's *Drop* (within the circle of the grated passage,)	2
3. Inspector's *Inner-Landing-place* (within the same circle,)	2
4. Inspector's *Straits* (passage through the subterraneous arch under the cells,)	17
5. Inspector's *Outer-Landing-place*, from the termination of the arch to the commencement of the *rising-stairs*,	2
6. Inspector's *Rising-stairs*, from the exterior annular area to a little above the level of the ground,	8
7. Inspector's *Outer-Bridge* (over the remainder of the above area,) about	2
	41

8. Inspector's Covered-way, . . 9. Steps up to the Look-out, . .	Undeterminable, depending on the magnitude of the establishment and other local circumstances.

II. *Prisoners' Passages on each side.*

1. Prisoners' Straits,	17
2. Prisoners' Landing-place,	2
3. Prisoners' Rising-stairs,	8
4. Prisoners' Bridge, about	2
	29

5 Prisoners' Lanes, .	Undeterminable, for the same reason.

The Figure annexed represents an AIRING or MARCHING PARADE. It serves to show how a given number of men may be aired by walking, in the least possible space, without infringement on the Plan of Separation.

		F.
Length of the Parade, say		150
Width,		96
Number of feet in each walk,		6
Multiplied by the number of parallel walks in the above width,		6
Gives the number of feet occupied by the walks in the above width,		36
Number of feet of vacant interval between walk and walk,	12	
Multiplied by the number of intervals in the above width,	5	
Gives the total number of feet of vacancy in the above width,		60
Sum of the width of the walks, added to that of the intervals, gives the total width as above,		96
Number of feet of interval between line and line in the same walk, say		6
Number of lines capable of being contained, on the above conditions, in an area of the above dimensions, in the manner represented in the figure.		146
Multiplied by the average number men in a line,		3
Gives the total number of men that may be aired by marching on a parade of the above dimensions, without approaching nearer than as above,		438

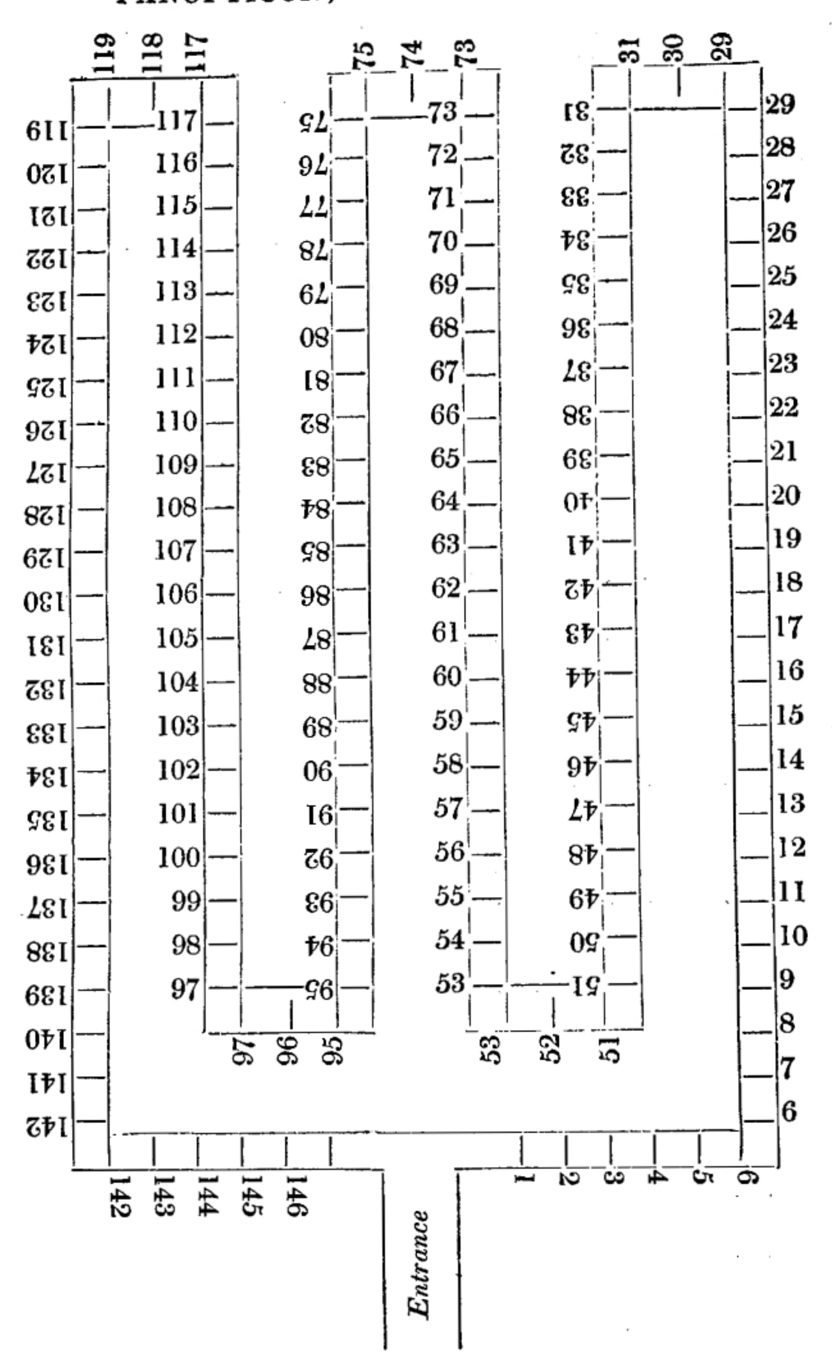
Each cell is supposed to occupy a distinct line: the numbers in a line being 1, 2, 3, or 4.

The number annexed to each line shows the station occupied by each cell when the figure is completed.

The lines might be marked out by double rows of clinkers; the track of each man by a single row; and the walks, if necessary, by stakes and ropes.

At every turning, the outermost man at one or other side turns a quarter-round, as in the military exercise, while his comrades on the same line, by a short run, gain the new line. Thus the exercise of running is combined with that of walking.

The number annexed to each line shows the station occupied by the inhabitants of each cell when the figure is completed.



This plan being designed merely for illustration, it was not thought worth while to bestow the pains that would have been necessary to give it a thorough discussion, and clear it altogether from the imperfections that may be observed in it. From this example, it will be easy to accommodate the line of march to the form of the ground; giving it the radial figure, and making the entrance from the central yard. The walks would in that case diverge from one another in pairs at the farthest extremity, like fingers on a hand. But the greater the divergence, the more space will, it is evident, be consumed in waste.

The wheels, which on six days serve for gain as well as air and exercise—would there be any objection to their serving on the seventh for air and exercise without gain? If not, then even the walking-parade, with the expense of the walls with which it must be surrounded, might be struck out as superfluous.

The question would be particularly material in a town, where not only the expense of the walling might be grudged, but the ground itself might be unobtainable.

In such a situation, if the wheel-exercise were thought improper for Sundays, even the roof of the building, might, if made flat on purpose, be made to answer the purpose of a marching parade; only in this case the space not being sufficient to air the whole number of prisoners at once, without breaking in upon

the plan of separation, the half only, or the third part, can partake of the exercise at a time.

The same situation might, with like management, be made to serve likewise for the schools, proposed to be held, whenever weather will permit, in the open air on Sundays. See the Section on *Schooling*.

SECTION XXI.

APPROACH AND FENCES.

In the contrivance of the fences, I had of course two classes of persons in view: the prisoners within; and hostile mobs, or such individuals as might be disposed to form plans or join in plots for the escape of prisoners, without. To these were added, in the contrivance of the approach, the subordinate keepers; as likewise, though with a different view, the chapel-visitors. While the government or coercion of the first three of these four descriptions of persons was to be provided for, the accommodation of the last, those still better than gratuitous inspectors, who, instead of being paid for inspecting, may be content to pay for it, must not be neglected.

The approach, I make *one* only: a walled avenue, cut through and from the surrounding wall to the front of the building, thrown back purposely to a certain distance — say, for example only, 240 feet, twice the diameter of the polygonal part of the building, neglecting the projecting front. The aperture thus made is closed by a set of *gates*: a small one, close to the *porter's lodge*, for foot passengers; next to that, a larger one, for carriages to go in at; and beyond it, one of the same size as the second, for carriages to return by. At the very entrance, the avenue is contracted as much as it can be, consistently with the above-mentioned purposes; it grows gradually wider and wider as it approaches the building; arrived at a distance equal to the breadth of the projecting front, it stops short. Conceive a square having this front for one of its sides. In the opposite side, the walls that bound the avenue terminate. In the same line terminate two walls or other fences, which, issuing at right angles from the front, bound the two remaining sides of the square. The avenue, though gradually expanded from the entrance to the spot where it falls into the square, wants on each side some feet of occupying the whole width. That interval is filled up on each side by a pair of *gates*, which, being of open work, afford to the building access to, and view of, the spaces on each side the avenue; designed partly and principally for containing offices, and affording small gardens to the officers. In the centre of the square stands a *lamp-post*, or some such object, serving as a direction to carriages in turning, and from this central mark, to the pier between the two gates across the entrance, it might perhaps be found convenient at chapel-times, to keep a strained rope or chain, for the purpose of separating the path of the returning, from that of the approaching vehicles; thus obviating the confusion, which, without such precaution, is apt to arise in a throng of carriages.

The public road runs, according to local circumstances, either in the same direction with the avenue, or else at right angles to it, and parallel to the wall cut through to form the approach. No public highway, either carriage-road or foot-path, runs near to it in any other quarter.

Parallel to the gates, and to the extent of the gates, the road is bounded on the other side by a wall, which may be called the *protection-wall*, and behind it a branch of the road, which may be called the *protection-road*.

I. *Why only one approach to so large a building?*

1. For the sake of *economy:* the more approaches, the more porters.

2. For the sake of *safe custody* and *subordination:* the more exits, the more places to watch, and the greater the danger of escape. And were there more exits than one, all would not be equally under the view of the head-governor. What if he, and the next in authority under him, had each a separate exit under his care? The inspective force would be diminished by one half: on the one side, the subordinate would be withdrawn from under the controul of his principal; on the other, the principal would lose the assistance of the subordinate.

II. *Why throw the building back in this manner, and place it in a recess, rather than close to the road, and flush with the surrounding wall?*

1. For *security;* and that, in the first place, against enterprises from within. Suppose a prisoner, by permission or by negligence, got out and landed at the front of the building: on this plan, what chance has he gained of an opportunity of escape? He is inclosed in a defile, with the building at one end, and the gates that open to it on the other; exposed on one side to the whole view of the front, and on the other to that of the gate-keeper, without whose concurrence the gates can afford him no exit, and the prison habit betraying him to both. On the other hand, suppose a part of the building to have doors or windows opening to the highway: let a man but have got through any one of those apertures, he finds himself at large. What though the part thus bordered by the road should be no part of the place designed for prisoners, but only of the house or lodging of one of the officers, the governor for example?

Such places may not be always inaccessible to the prisoners, at least to all of them. A prisoner may be there by permission, engaged in some domestic employment; he may have stepped in thither on some pretence; he may have been let in on purpose by the infidelity of some servant of the house. Should even the prisoners be all of one sex, there may be servants of the other. Of a prison so circumstanced, where is the part that can be sure of being always proof against the united assaults of Cupid's arrows and Danaë's golden shower?

2. Against clandestine enterprises from without. What enterprises of this nature can be attempted with the smallest prospect of success? Without procuring the door to be opened by the porter, a man cannot pass the gate; he is then inclosed in a defile as before, reconnoitred all the while from the lodge at one end, and the building at the other. The gate which lets him in might, in the act of opening it, and without any attention on the part of the porter, ring a warning-bell proclaiming the stranger's entrance and approach.

3. Against hostile enterprises by mobs. The enterprises of mobs cannot, like the attempts of individuals, be sudden and secret: they have always a known cause. The guards are everywhere upon the watch. Is mischief threatened? The porter rings his bell — a sentinel fires his piece — the force of the prison is collected in the front. What mob will make any attempt against the gates? No sooner have they begun, than they find themselves exposed to the fire of the whole front; that front more than twice the breadth of the space they occupy, and converging thither as to a point. There needs no riot-act; the *riot-act* has been read by the first man who has forced himself within the gates. The line is completely drawn beyond all power of mistake — all within it are malefactors. The avenue is no public highway; it is the private inclosure of the keeper of the prison: those who force themselves within it do so at their peril.

In the ordinary state of prison-building, all preparations for an attack, everything short of the actual attempt, may be carried on without molestation under the keeper's nose. The rioters collect together in force, in what numbers they think proper, and with what arms they can procure. What shall hinder, or who shall so much as question them? It is the king's highway: one man has as much right there as another. Let them have what arms they will, still who shall question them? Every man has a right to carry arms, till some overt act demonstrates his intention of employing them to a forbidden purpose. Observe now the consequences: The walls of the prison are impregnable; its doors well fortified; windows looking to the highway it has none. But the keeper's doors are like other doors — his windows like other windows. A bar or a log will force the one — a stone or push will lay open the other. Where the keeper enters, there may the rioters enter, and there may the prisoners get out, when they are in the keeper's place. The cuckoo is completely hedged in, except at one place which is not thought of.

At Newgate, the building, including the keeper's house, runs along the public footway: and the fate of that edifice at the disgraceful era of 1780 displays the consequence. No impediment does it present, natural or legal, that can hinder any single man, or any body of men, from introducing their eyes or hands close to the keeper's windows. A little army may come up with clubs and iron crows to the very door, ready to force it open; and till the attack is actually begun, there is neither right nor obstacle to impede, much less power to hinder them.

All the other prisons in London, that I recollect, the King's Bench amongst the rest, are in the same predicament. Had the contrary precaution been observed, the tragedy of St. George's fields would hardly have been acted. The ill-fated youth, whose death drew forth in its day such a torrent of popular discontent, would not have fallen, or his fall would have been acknowledged to have been not undeserved.

In a great town, the ground may not always admit of giving the remedy its full extent; though, to a certain extent, and that sufficient to give a vast advantage over the common plans, it might be made use of almost everywhere.

Even Mr. Howard's plan, though uncircumscribed by any considerations of local necessity, even Mr. Howard's plan of perfection in the abstract, has overlooked it. The piles of building allotted to the convicts are indeed placed all of them within, and at a distance from, the surrounding wall; but lodges for porters, a house for a chaplain, and another for a steward or storekeeper, form part of it. Alongside, for anything that appears, runs the public way: nor is there any thing to hinder a mob of rioters from forcing themselves in at the chaplain's and the steward's door and windows, till the outrage is begun.

Thus it stands upon the face of the engraved plan. His after thoughts, so far from obviating the inconvenience in question, double it. His last opinion is in favour of "a spacious walk, clear of buildings, through the centre, with three courts on each side, and the chapel and chaplain's apartments at the opposite end, facing the governor's own apartment."* Is the chaplain, then, to have an outlet at his end, as well as the governor

* On Lazarettos, p. 229.

at his? This will require another pair of lodges (for the plan gives two) and at least one other porter. At any rate, the chaplain and his family are out of the reach of lending an inspecting eye to observe the approach of those who come on the design, or with the pretence of visiting the governor, his family, or his servants. The inspective force at that end is *pro tanto* diminished by the removal of that constituent part of it. What Mr. Howard's reasons were for this change of opinion, he has not told us.

No one can be more anxious than Mr. Howard to prevent every part of the building where prisoners are lodged from having windows to the street. Why? Because such windows, besides affording converse, will let in spirituous liquors, not to mention implements for escape. Windows to the governor's house, or the chaplain's, will not indeed let in spirituous liquors, or any thing else, into the prison clandestinely, but they will let in armed deliverers openly, where they are in force.

III. *The avenue—why contracted at the entrance?*—The narrower the entrance, the less the expense of the gates which close it, and the more perfectly it lies within the command of the porter. At the spot where it reaches the building, were it no wider than it is at the entrance, it would scarce afford turning-room for carriages, much less the standing-room which would be requisite at church time. Were it of less width than the front, so much of the front as was excluded, so much of the inspective force which that part of the building furnishes, would be lost.

Of the total area inclosed by the general surrounding wall, the magnitude must of course depend upon a variety of circumstances; some of a more general, others of a local or otherwise particular nature. Behind the building, it will be occupied by the prisoner's yards, of which in the last section. In front of the building, on each side of the approach, it will be occupied by exterior offices and officer's gardens.

On the outside all round, at a small distance (say 12 feet) from the wall, runs a slight *palisade* of open work. The intermediate space receives four centinels, whose paths flank and cross one another at the ends. The walls, instead of forming an angle, are rounded at the junctions. The palisade will serve as a fence to the grounds on the other side: but highways on which the public in general have a right to pass, whether carriage-ways, or simple foot-ways, are kept from approaching it as far as may be.

At two of the corners, the place of the palisade might be occupied by two guard-houses: each with two fronts to flank and command the two centinel's walks. To one of these I should give such a situation and such a height as to enable it to command the airing yards: but at that quarter in which it would be at the greatest distance from those destined for the reception of female prisoners, if that sex be admitted, it might have a platform in that situation, and in that elevation, without having any windows either way. It might have a communication with the airing-yards, to be made use of in case of alarm and demand of succour from the keepers in the building or the yards. The communication might be effected in any one of several ways: by a draw-bridge, by an under-ground passage, or by a ladder kept under lock and key; the key always in the hands of the commanding officer. To prevent converse between the soldiers and the prisoners, the doors opening into the platform (for windows that way it has none) ought to be locked up, and the key kept in the same custody. It is for this same reason that I attach it, not to the wall, but to the palisade which is detached from the wall.

IV. *Why the palisade?*—To cut off from the public in general all facility and all pretence for approaching the wall near enough to attack the centinel, to hold converse with the prisoners in the yards, or to plant ladders or throw over ropes to enable them to escape.

V. *Why of open work, rather than close?* a wall, for instance, or a park-pale?—For cheapness; and that nobody may approach it without being seen.

VI. *The centinel's walks, why crossing and flanking each other?*—That each centinel may have two to check him. Who in such case would venture or offer to bribe any one of them to connive at projects of escape? The connivance of any *one*, or even any *two*, would be unavailing.

VII. *The walls—why rounded off at the meetings?**—To avoid giving the assistance which angles afford to the operation of climbing up in the inside. Add to which, that the greater the space thus rounded off, the greater the part of each centinel's walk which is laid open to the view of the two others.

As to the height of the wall, and the thickness, which will be governed by the height, the quantum of expense necessary on this score would depend upon the decision made as to the resorting or not resorting to the military establishment for a guard. With this assistance, added to that of the palisaded walk, walls of very moderate height would be sufficient: say 8 or 9 feet, about 2 or 3 feet above the height of a tall man.† This height

* For this precaution I am indebted to Mr. Blackburn. In what instances, if any, he has himself applied it, I do not know. I took the hint from a history he used to tell of a man who, by the assistance of two walls meeting at a right angle, and an instrument of his own contrivance, used to convey himself in this way over the wall of the King's-Bench prison in St. George's Fields.

† Or would not 12 feet be deemed necessary? since one man might mount on the shoulders, and perhaps for a moment on the head of another.

would be sufficient to prevent any intelligible converse between prisoners and centinels: forbidden conversation will not be carried on in a loud voice, in the ears and under the eyes of the superiors who forbid it. Without this assistance, it might be rather difficult to draw the line.

By rejecting this assistance, the requisite quantity and expense of walling that *might* be thought requisite, might be increased in another way. The higher the wall, the more obstructive to ventilation. The higher the wall, the more ample the space that on that account it might be thought necessary to inclose within it; and the greater that space, the more walling it would take to inclose it.

Did it depend upon me, though I would get a military guard if I could, yet even without such assistance, trusting to so many other safeguards, I think I would put up with an 8 or 9 foot wall. In the look-out, sits constantly an inspector, armed and instructed, and commanding all the yards. By a bell, he summons to his assistance at any time the whole collected force of the prison.

VIII. *To what use the protection-wall, and the protection-road?*—The use is tolerably well indicated by the name. Behind the wall, and in the road, in case of an attack by a riotous mob upon the gates, as many passengers as do not choose to take part in it will find shelter; and the attack may be opposed with fire-arms from the building with the less scruple, as no one can suffer from it whose guilt has not made him the author of his own fate.

And would you wish, then, to see a perhaps well-meaning, though culpable multitude devoted in heaps to slaughter? No, surely: though better thus than that the prison should be destroyed, the prisoners turned loose upon society, and justice struck with impotence. But the truth is, that nothing of this sort will happen: the more plainly impracticable you make the enterprise, the surer you may be that it will never be attempted. Prevention is the work of humanity. Cruelty joins with improvidence in making the instruments of justice of such apparent weakness as to hold out invitation to a destroying hand.

This is perhaps the first plan of defence against rioters, of which the protection of the peaceable passenger ever made a part—the first in which the discrimination of the innocent from the guilty was ever provided for or thought of.

In the instance of every prison—of every public building as yet existing—an attack once begun, what is the consequence? The guilty must be suffered to perpetrate without controul their forbidden enterprise, or a continual risk incurred of involving the innocent in their fate. What is the effect of street-firing? a medley massacre of rioters and passengers, of guilty and innocent, of men, women, and children.

The *maximum* of economy, with regard to the figure of the ground, and thence of its surrounding fences, remains yet to be suggested; and situations may be conceived, in which it would not be irreconcileable with convenience. The quadrangular figure is that which will naturally have first presented itself. But three lines are enough to inclose a space. The ground *may* therefore be *triangular;* nor, if regularity and beauty, in as far as it depends upon regularity, are disregarded, is it necessary that of this triangle any two sides should be equal. An equal legged-triangle, with the legs longer than the base, is to be preferred to an equilateral triangle, much more to a triangle having the angle opposite the base equal to or greater than a right one. The reason is, that the figure may have a space running out in length, in order to afford a sufficient length of avenue; the point or apex being cut off, in order to form the entrance.

The number of the centinels, too, if the military plan of guarding be approved of, and if the difference in point of number be an object, will, in this way, be reduced from four to three.

With or without a guard, the inspection principle, seconded by other assistances, we have seen, or shall see, relative to the plan of management, supersedes the necessity, without detracting anything from the ingenuity, of Mr. Blackburne's expensive system of mural fortification. "If a man gets to the other side of the wall," said he to me one day, as he has said to others, "it must be by getting either through, or under, or over it. To prevent his getting through, I make it of stone, and of stones too massy to be displaced, as bricks may be, by picking. To prevent his getting under, I make a drain. As he undermines, no sooner is he got within the arch, than out flows the water and spoils his mine." To prevent his getting over, there was a system of precautions, one under another, too long to be repeated here. Sound logic was here combined with admirable ingenuity; in all this there might be nothing which, on a certain supposition, might not be necessary. What is that supposition?—that in some cases a number of prisoners, in others at least one prisoner, have time almost without stint to carry on their operations unobserved. In all other modes of construction, under all other systems of prison-management, the supposition speaks the truth. But under the Panopticon mode of construction, under the plan of management which it supposes and provides for, is this the case?—exactly the reverse. What prisoner carries on plans of escape under a keeper's eye?

In a dark night, it may be said, *the benefit*

of the inspection principle fails you. Yes, if there be no lamps sufficient to light the wall;—yes, if there be no *watchman* patrolling in the house. The question then lies between the expense of this system of complicated circumvallation, and the expense of lighting, or rather the expense of providing a single watchman to go the rounds. I say, that a watchman will be sufficient security without even lighting on purpose, and that, in an establishment like this, a watchman need cost nothing: since the people necessary for guarding and instructing by day, will be sufficient to watch at night by turns. Even in the darkest night, and without artificial light, can a prisoner, without tools, at no more than 25 feet distance from the watchman, first force through the glass of a window, and then through iron bars on the other side? Will he hazard any such attempt, when, supposing him against all probability to succeed, there is still a wall of 13 feet high for him to climb (I mean that which bounds the exterior well,) and beyond that, another?

To get clear altogether of the obstruction afforded by walls to ventilation, it has been proposed* to dig a ditch, and to set down the wall at the bottom of the ditch. The expedient seems unnecessary, the expense of it considerable, and the inconvenience material and unavoidable.

The inconvenience is, that whatsoever it may do with regard to security, it gives up seclusion. Of what breadth must your ditch be? A hundred, two hundred feet, would not preclude converse with the ear; nor four hundred feet, nor a thousand, with the eye. The grounds all round would be a continual rendezvous for the associates and confederates of the prisoners; that is, for all sorts of malefactors. It would be a continual scene of plans of mischief, and plots for escape. What should hinder a man on the outside from tossing over a rope or a rope-ladder to a prisoner prepared to receive it? what should hinder twenty men from doing the same thing at the same time?

How is the ditch to be constructed? If the sides are perpendicular, they must be supported by brick-work, or the earth will be continually washing and crumbling in, till it reduces the depth of your ditch, and consequently the height of your wall, to nothing. Are they to be thus supported? Then, besides the expense of an enormous ditch, you have that of two walls instead of one. Are they to be sloping without brick-work? The width of this enormous ditch must then be enormously increased, and still the obnoxious effect will be gradually produced. By the prisoners, at least on their side, everything will be done, that can be done, to accelerate it. Among their friends, too, on the outside, to contribute a stone or an handful of earth, will be a pious work.

At any rate, you have on each side a receptacle for stagnant water. Which would be the greater?—the service done to health by the sinking of the wall, or the detriment by the accumulation of this water?

It would be incompatible with the mode of guarding above proposed, by centinels inclosed in inaccessible lanes; unless stationed at such distances as would occasion an enormous addition to the length of their walks, and to the quantity of ground consumed; for it would be altogether ineligible to bring the guards so near as to possess an easy intercourse with the prisoners.

Were it indeed worth while, the advantage in point of ventilation expected from this idea, might be obtained by a partial adoption of it, with the help of one of the precautions already indicated. It would not be necessary to lay the space open all round: it would be sufficient were it laid open at one end, and that end might be narrowed in the manner of the approach as above described. But at that end, the property of the ground on the other side, to a very considerable distance, would require to be attached to the establishment, in such manner that no stranger should have it in his power to approach near enough to hold any sort of converse, either with the prisoners, or even with the centinel; whose path must also be at such a distance from the nearest spot to which they can approach, as to prevent all converse between him and them, in a voice too loud to escape the ear of the inspector in the look-out.†

* By the late Dr. Jebb, in a pamphlet written on purpose.

† Prisons are not by any means the only buildings to which this mode of exterior fortification (if it be doing justice to a precaution so simple and unexpensive to style it by so formidable a name,) might be applicable with advantage.

With a view to *inspection*, it might be applied to all such public establishments as, on account of their destination, of their importance, their magnitude, and their destructibility, are particularly exposed to the clandestine enterprises of foreign emissaries; such as public magazines and dock-yards. The approach should be so constructed, and the officers' houses and stations so disposed, that every strange face should have the gauntelope to run, as it were, through all their eyes, and that any instance of negligence on this head, on the part of any one of them, should be exposed to the observation of all the rest. Had a plan like this been pursued in Plymouth rope-yard, the sad destruction to which that important magazine was devoted in 1776, by the hands of a wretched incendiary, might perhaps never have had place.

With a view to *defence against open hostility*, it might be applied not only to every prison, but to every other building, public or private, which by the provocation it holds out to rapacity or popular antipathy, is liable to become the object

SECTION XXII.

MEANS OF SUPPLYING WATER.

Two sources of supply present themselves: the rain-water collected on the roof; and common water, such as the situation furnishes, to be forced up by the labour of the prisoners in the airing-wheels.

The first supply is not a constant one, and will go but little way towards answering the exigencies of so numerous an inhabitancy. It must, however, be carried off at any rate, and any one of the eight iron tubes that form the supports of the inspection-tower, will afford a channel adequate to the purpose. Branches from this main would serve to convey the water to reservoirs in or near to the kitchen and the laundry on the sunken floor.

The only combustible parts of the building, or rather the only parts of the building affording a few combustible materials, will be the inspection-lodge, the inspection-galleries, and the chapel-galleries. By way of provision against such accidents, a *fire-engine* should be kept in a place contiguous to the central area, with pipes communicating either with the reservoirs above mentioned, or with the more copious and certain ones, which supply the water that is forced up by the wheels.

To receive *this* water, an annular cistern runs all round the building. It is placed immediately under the roof, and within the outer wall. The wall affords it support; the roof, a covering from dust and any other matters that might foul the water. Under it run down, in a perpendicular direction to the bottom of the building, at the places where the partition-walls join the outer wall, piles of iron pipes serving as mains, one placed between, and serving for, every two piles of cells. From each of these mains run 12 short branches with a cock to each, one to each of the twelve cells. Of these mains, which for 19 cells on a story cannot be fewer than 10, supposing none to be wanting for the dead-part; two, by the help of so many branches running over and across the exterior area, will serve likewise for conveying the water up by the pumps worked by the wheels.*

Shall the whole supply of water be carried up to the top of the building? or shall the quantity required for each story of cells, be carried no higher than is necessary to convey it to those cells? The latter arrangement would save labour, but it seems questionable whether upon the whole it would be the most economical one. Instead of one cistern, it would require six, each of which must have its supports running round the building; and though each would require but one sixth part of the capacity of the general cistern, it would require almost as much workmanship, and much more than one sixth, perhaps as much as one-half, of the materials.† To form a precise statement of the comparative economy of the two plans, compute the value of labour saved by that which gives six particular cisterns, and set against it the probable annual average of the extra repairs, added to the interest of the extra capital which it would require.‡ But a more simple, and what seems to be a decisive consideration, is the insecurity that would result from these annular cisterns running round on the outside, one under every story but the lowest: they would be so many ladders to climb down by; from whence would also result the necessity of the further expense of having strong bars to those stories of cells, to which, upon the present plan, as already observed, no such guards are necessary.

As to the particular mode of conveying the water to the cistern, it is a topic I pass over, as bearing no relation to the particular construction or destination of the present building; with only this remark, that, as the height is more than double that to which water can be raised by the pressure of the atmosphere, some other sort of pump than the common lifting one must be employed. Forcing pumps I observe employed in the New St. Luke's Hospital, and proposed by Mr. Howard in his Plan of a Penitentiary-house.

SECTION XXIII.

OF THE MODE OF WARMING THE BUILDING.

THE possible differences in the mode of ap-

of lawless violence. A money-bank, a great corn-magazine, a place of worship belonging to any obnoxious sect, a new erected machine which appears to threaten a sudden reduction in the price or the demand of any kind of labour—may afford so many examples. With these precautions, Dingley's saw-mill, for instance, for which the nation was charged with so heavy an indemnity, would probably have escaped.

I speak not here of the mode of guarding by centinels—a species of protection which could only be afforded to public establishments, and to such establishments as were of adequate importance. I speak only of the mode of constructing the approach: its unity—its situation in a walled recess—that recess as deep as the ground will allow—contracted at the entrance—and commanded by as many officers' houses and stations as can be brought to bear upon it—gates of open-work—and on the other side of the road a protection-road—covered by a protection-wall—all other roads, besides that which the approach opens to, kept at a distance.

* To adapt them to this double purpose will require some little contrivance, but too obvious to need particularizing.

† I say six; for if it did not answer to have so many as six, by the same rule it would not answer to have any more than one.

‡ There would, besides, be the expense of the

plying artificial heat to a building by means of culinary fire, may be comprised in the following short analysis: It may be either *open* or *close;* if close, either *unventilative* or *ventilative.* The open, in which the fuel is burnt on hearths or in grates, with or without the benefit of a chimney, is that most in use in our three kingdoms. The unventilative is exemplified in the Dutch, Russian, and Swedish stoves; and in England in those used for hot-houses, and in those used in dwelling-houses and other buildings under the name of Buzaglo, who first brought them in vogue: the ventilative, in the stoves called Dr. Franklin's, or the Pennsylvania stoves, and in those for which Messrs. Moser and Jackson* have enjoyed a patent for some years.

The common, or open mode, is what, on account of the expense, nothing but absolute necessity would justify the employment of in a prison. Expense of chimneys, grates, and other fire implements; expense of fuel, and of the time employed in conveying it: these expenses must be multiplied by the whole number of cells; for whatever need there is of it for any one, the same is there for every other. Even the mischief that might be done by fire, through design or carelessness, secure as a building thus constructed is from such mischief in comparison of an ordinary house, is not altogether to be neglected.

The second, or unventilative method, besides its being far from a pleasant one to those who are not accustomed to it, is by no means exempt from the suspicion of being unfavourable to health. The heat subsists undiminished, no otherwise than in as far as the air in the room remains unchanged: calefaction depends upon the want of ventilation. The air will not be as warm as is desired at a certain distance from the heated stove, without being much hotter than is desired in the vicinity of it: between the two regions are so many concentric strata, in one or another of which every sort of putrescible substance will find the state of things the most favourable to the prevalence of that noisome and unhealthy fermentation. The breath and other animal effluvia, while they are putrifying in one part of the room, may be burning in another. The unchanged and unchangeable air is corrupted; the lungs, the olfactory nerves, and the stomach, are assailed in all manner of ways at once, by empyreuma, by putridity, and by respiration.†

In the different modes of producing these noisome effects, there are degrees of noisomeness. An iron stove is worse than an earthen one: it contracts a greater degree of heat; and the vapour produced by the solution of a metal in burnt animal or vegetable oil, is an additional nuisance, over and above what an unmetallic earth will produce.

Over these impure methods of obtaining heat, the *ventilative* is capable of possessing a great advantage. The air which is to receive the heat being continually renewed, may be brought from the pure atmosphere without; and instead of being stagnant, flows in in a perpetually-changing stream. Instead of burning in one part, while it is freezing in another, the air of the room is thus rendered throughout of the same temperature. A succession of cold air from without is the less necessary, as the warm air, what there is of it, is not less pure;‡ and this pure, though heated air, if introduced, as it ought to be, from the lower part of the room, helps to drive up before it, to that part of the room which is above the level of the organs of respiration, that part of the air which, by having been breathed already, has been rendered the less fit for breathing.

By the Pennsylvanian stoves, these advantages were, however, possessed in but an imperfect degree. — Why? — Because the *warming-chamber* was a metallic one; it was of iron. By partitions made between an iron back to the grate, and another such back, or the brick-work behind, the air was made to pass through a long, though tortuous channel of that metal, in a too highly heated state.

In the room of the metal, substitute a pure and unmetallic earth, the mischief has no place.

The misfortune is, that by means of earth alone, the operation has not hitherto been found practicable, unless perhaps it be upon a large scale. In iron, your warming-chamber may be very thin, is soon heated, and is not liable to be put out of order by the heat. In earth, that receptacle, if thick, that is, of the thickness that must be given to it if made of

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bringing so many pipes through the outer wall of the building.

* Ironmongers in Frith-street, Soho.

† Get the stove heated upon your entrance into a German inn: in about half an hour you perceive an abominable stink; in another half hour, a slight degree of warmth; in a third, the heat begins to be comfortable; in a fourth, it is become suffocating. Open a door or window for relief: in rushes the air in partial gusts, and gives you cold.

In hot-houses, though the unpleasant effects of this mode of warming are perceptible to many people, they are however less so than in common dwelling-rooms; hot-houses being so much less inhabited by animals, whose only effect on the air is to taint it, than by vegetables, which, howsoever they may vitiate it in certain ways, are found to purify as well as sweeten it in others.

‡ It is suggested to me by Dr. Fordyce, that in such a building matters might be contrived so that scarce any air should enter anywhere that had not passed through the *warming-chamber.* I make use of that word to express the receptacle through which the air is to be made to pass in order to receive the heat.

bricks, is a long while in heating, a great deal of the heat is absorbed and lost in it; it gives out its heat with difficulty to the air, which, before it has had time to take up a sufficiency of the heat, is passed through and gone;* add to which, that in joining the bricks, mortar must be used, and this mortar will be liable to shrink and crack by the heat, and lose its hold. On the other hand, if the earth be thin, as in retorts and crucibles, it will be liable to break by accidental violence, or crack by change of temperature; and, at any rate, it will not receive the heat from the fuel, or communicate it to the air, so soon as metal would.

The warming-chamber, or set of warming-chambers, employed by the artists above mentioned, is calculated to obviate both those inconveniencies. It consists of earthen retorts, open at both ends, and inclosed in iron ones. The air which is to be heated, passes through the interior earthen vessel without coming in contact anywhere with the exterior iron one. The iron retort, being that which alone is exposed to the immediate action of the fire, defends from accidents the earthen one within. The earthen one, being the only one of the two that is in contact with the air, defends that element from the contaminating influence of the heated metal on the outside.

The ventilative plan, modified in such manner as to avoid the use of iron for the inside of the warming-chamber, at least of iron in a too highly heated state, being determined upon, the question is, how to apply it in such a building to the most advantage?

The first expedient that occurs is the making of what use can be made of the fires employed for the preparation of the food. From this source, any quantity of heat might doubtless be obtained; but whether in such a situation it could be obtained to any considerable amount upon advantageous terms, seems rather disputable. In ordinary kitchens a good deal is produced, more or less of which might be employed perhaps in this way to more advantage than it is in common. But in a building of this form, and designed for such inhabitants, if the heat employed in the preparation of the food were disposed of to that purpose to the best advantage, the quantity that would remain applicable to any other purpose would, I believe, turn out to be but inconsiderable. That it would not be always sufficient for that of the warming of such a building I am altogether confident.†

The deficiency must at any rate be made up by stoves to be provided on purpose. In

* Could not the means be found of detaining the air with advantage till it had imbibed a sufficient degree of heat—for instance, by a pair of valves? This is one of many points that might require to be considered.

† The most economical mode of dressing food by culinary fire, is either *baking* or *boiling*.—Baking, if performed upon the most economical plan, might be conducted in such a manner as not to afford any heat at all applicable to any other purpose, as will be seen below. The most economical mode of boiling is in what are commonly called *coppers*,—because usually made of that material—vessels bedded in brick-work, with a place for fuel underneath, closed by a door which is never opened but for the introduction of the fuel. In this way, a small proportion of fuel, comparatively speaking, serves, scarce any of the heat being discharged into the room.

On the common plans, the door consists of a single iron plate. It might be made double: consisting of two parallel plates, an inch or so asunder, with a bottom between: the interval might be filled up with sand, or some other pure earth that is a worse conductor of heat, if any such there be. The heat would thus be the better kept in, and the outer partition of the door might be made to receive so little of it as not to contribute in the smallest degree to the contamination of the air.

The heat contained in the steam raised by the boiling, should not be suffered, as in private kitchens, to escape in waste. It should be collected, and applied by tubes issuing from the covers of the coppers, after the manner of a *retort* or *still-head*. In proportion to the quantity of the provision that could thus be dressed by steam, would be the quantity of heat that would be saved. The steam vessels would be ranged in front of the boiling vessels, upon an elevation somewhat higher. The boiling vessels, in order to catch as much of the current of fire as possible in its way to the chimney back, should extend as far back as was consistent with convenience. Hence, too, another advantage: they would have the more surface, and the more surface the more steam they would yield to the steam vessels with a given quantity of heat in a given time. The better to confine the heat, it might be worth while, *perhaps*,[a] to make the steam vessels, as also the covers and necks of the boilers, double, with a lining of some badly conducting substance, such as flannel or feathers, between the parallel plates.

The following fact, communicated by an intelligent and reverend friend, will help to show how far any attention that can be paid to the confinement of heat is from being a trivial one:—

In the parish of P——, in the county of W——, live two bakers, T. W. and T. R.—T. R.'s oven is better protected than that of T. W.; that is, so situated and circumstanced, that whatever heat is introduced into it is better confined within it, less drawn off from it by surrounding bodies. Observe the consequence:—To bake the same quantity of bread takes upwards of three times the quantity of fuel in the badly protected oven, that it does in the other.

The following are the data, in the precise state in which they were given; from whence the accuracy of the calculation may be judged of:—

In T. W.'s oven (the badly protected one) it takes 15 pennyworth of wood to bake 40 gallon loaves.

In T. R.'s, it takes but 8 pennyworth of wood (4 faggots at 2d. each) to bake 50 gallon loaves;

[a] Dr. Fordyce, from experience, says *certainly*.

this view, the sort sold by the ingenious artists above mentioned, present themselves as the most eligible yet known.

What, then, is the degree of artificial heat which the whole of the apparatus employed should be capable of maintaining?—what size and number of stoves would be necessary to insure it?—from whence ought the air to be taken into the warming-chamber?—whereabouts to be discharged from it?—how to be made to visit every cell?

As to the number of degrees of extra heat which the apparatus should be capable of affording, it should hardly be less than 40 of Fahrenheit's scale. Forty added to 32, the degree at the freezing point, would make 72, 17 degrees above the height commonly marked *temperate*. But in time of frost, the heat is commonly more or less below the freezing point: one instance I remember of its being so much lower as 46 degrees; 14 below 0. This, it is true, was for a few hours only, and that in the open air, and in a situation particularly exposed. And in a building where the kitchen fires might at any rate afford something, and the warmth of so many bodies, added to that of so many lights, would afford something more, and where the thickness of the walls would afford so much protection against sudden vicissitudes, no such very extraordinary deficiencies seem probable enough to be worth providing for. My learned adviser, above mentioned, thinks I may venture to set down the lowest degree to be apprehended as 25. Forty added to this makes 65; 10 degrees above the temperate point. This may be more than will ever be necessary. But in a permanent provision, some allowance should be made for accidents, and in a business of such uncertainty, still more for miscalculation. Officers, it is to be remembered, not less than prisoners, must be kept in view. Should necessity be the only object to be provided for in the one case, comfort and custom must be attended to in the other. Happily for the least regarded class, in a building of this form, to be warmed in this manner, very little distinction in regard to this important branch of comfort can be made.

As to the number and size, the seven supports (one of the eight being made use of as a water-pipe) afford so many chimneys, each of which is capable of receiving its stove. But how many out of the seven would be necessary, and those of what size? Experience would determine: but as a provision must be made in the construction of the building antecedent to any experience that can be obtained in the building itself, *data* collected from experience of other buildings must be looked out for. Such *data* are not altogether wanting. A single stove of Moser and Jackson's construction, being employed in St. George's Church, Bloomsbury, raised the heat *eleven* degrees of Fahrenheit's scale, and it did not appear that it was able to raise it any more. To produce in that church 40 degrees of extra heat, the number above fixed upon for our prison, it would therefore require *four* such stoves. What follows?—That to ascertain, *a priori*, from the above *datum*, as well as may be, the size and number of stoves of the same construction necessary for our building, three other *data* would be necessary: the dimensions of the above stove; the dimensions of the inside of that church; and the dimensions of the inside of the Panopticon proposed; noting, withal, that the quantity of glass in the central sky-light, in the annular sky-light, and in the cell windows, added to the number of the partition-walls between cell and cell, would probably lay the Panopticon under some little disadvantage in comparison with that church.

In the above manner, some conjecture may be formed relative to the total quantity of calefactive power that would probably be requisite: I mean, of the sum of the contents of the warming-chambers, in whatever manner they may be disposed.

But when the sum total of the contents is fixed upon, the number and relative size of the several warming-chambers is not a matter of indifference. Equality of distribution requires that the number should be as great as possible, and the capacities of the several warming-chambers equal. Eight supports, that is, eight chimneys to the twenty-four piles of cells, would give a stove to every three piles of cells. The dead-part occupying the space of five piles of cells, the middle one of the three supports that look to the dead-part would be the proper one to give up, and make use of as a water-pipe; the seven others would afford seven stoves among nineteen piles of cells.*

and when he bakes a second time the same day, it takes but half the quantity.

In a vessel consisting chiefly of iron, weighing upwards of a ton, contrived for the purpose of hatching eggs, Dr. Fordyce, many years ago, produced by a single lamp of the smallest kind in use, and communicated to the iron, a permanent degree of heat equal to that of boiling water. In the same vessel, by the same means, he produced an addition of heat to the amount of 60 degrees, raising the temperature from 40 to 100 in a large space in which a constant current of air was pervading every part. The use of feathers, supposed to be the worst conductors of heat existing, was the contrivance on which the production of those effects principally depended.—Suppose the knowledge thus gained applied to the purpose of dressing the food in the manner of an oven, what would be the surplus of heat applicable to the purpose of warming the building? None.

* Total capacity out of the question, the mere number would not raise the price to more than

Will the distribution thus made be sufficiently minute? Experience alone can decide with certainty. Of the three piles of cells corresponding to each stove, the middle one, if there were any difference, should receive more heat than the other two. But this difference I should expect to find little or nothing; and if it were but small, it would be rather a convenience than otherwise: varieties of temperature might thus be adjusted to differences with regard to employment, health, constitution, and good behaviour.

At its exit from the warming-chamber, shall the heated air be suffered to take its own course, or shall it meet with a tube to conduct it to the part at which it begins to be of use? This, too, would be matter of experiment, and the experiment might be performed without any considerable expense. Terminating in the nearest part of the intermediate well, each tube would require about 14 feet in length. For the materials, the worst conductors of heat that would not be too expensive, should be selected: a square pipe of four thin boards of that length, each four or five inches over. These might be covered with a case of loose cloth, of the texture of the warmest blanketing, which, to keep off the dust, and contribute still more to the confinement of the heat, might be enclosed in a similar tube. If by the help of these *radial* tubes, the distribution were not found equal enough, they might be made to terminate in a *circumferential* one of similar materials: the whole of the *channel of communication*, or *discharging duct*, as it might be called, would thus represent the exterior part of a wheel, composed of hollow spokes terminating in a hollow felly. The felly thus constituted should be pierced at equal and frequent intervals with equal apertures, the sum of which should be equal, and no more than equal,* to the sum of the apertures of the radial tubes.

Why these radial tubes? since, as far as they extended, they would prevent the horizontal distribution of the heat, and, though composed of such materials as to absorb as little of it as possible, they would at any rate absorb some. — For this reason: that without them a great part of the air, indeed the greatest, by mounting directly to the ceiling of the sunken story, would be already four or five feet above the floor of the lowest story of the cells: and the ceiling, as well by the nature of its materials as by its relative extent of surface, would absorb beyond comparison more of the heat than would be absorbed by the tubes.

The *horizontal* distribution of the heated air being thus provided for, *how to provide for its distribution in a perpendicular direction* among the six stories of cells in the same pile? For if no particular provision were made, the natural tendency of the heated air being to make its way out by the shortest passage, the greater part of it would mount up perpendicularly to the sky-light, where it would necessarily find chinks at which it would make its exit, without ever having visited the cells.

To prevent this aberration, and to ensure a regular draught through every cell, I insert a chain of tubes reaching from bottom to top, but with regular interruptions.† In the floor of each cell of the lowest story of cells, close to the front wall, at an equal distance from the two side-walls, and consequently at the crown of the arch, I leave a round hole, say four inches in diameter, passing through the brick-work into the sunken story below. To this hole I adapt a hollow tube of thin cast iron, of the same diameter. This tube is continued in height to within a few inches of the ceiling above; which brings it to between eight and nine feet in length. Arrived at that height, it terminates in a horizontal mouth, which may be closed by a sort of grating, transformable at pleasure into an unperforated plate.‡ Between this mouth and the lower end of the tube, is a wire grating, to prevent correspondence by papers. Immediately over this tube, is the open end of a similar tube with an expanding aperture, flush with the ceiling, and consequently at a few inches distance from the mouth of the first-mentioned tube; partly for the purpose of inviting the current that way in the same manner, partly for the sake of conveying the breathed air of that lowermost cell into the upper region of the next above it; and so all the way up.

The uppermost of all this chain of tubes runs through the roof, and opens immediately above. It may be there covered with

24½ guineas: the price of one of the least size sold by Moser and Jackson being no more than 3½ guineas; but the quantity of calefactive power obtainable from seven such small stoves would probably go but a little way towards furnishing 40 degrees of heat to such a building.

* If greater, the heated air might be discharged at the nearest part of the circumferential tube, before it had attained the most remote.

† For the general idea of a set of perforations for this purpose, and a view of the necessity of employing them, I am indebted to the obliging suggestion of Dr. Fordyce.

‡ A neat contrivance for this purpose is employed by Messrs. Moser and Jackson. Out of a circular plate of brass, spaces are cut in the form of *radii*, equal in dimensions to the quantity left. Under the metallic star thus formed, a similar one is stowed, connected with the upper one by a pivot on which it turns. On giving a slight turn to the under star, it moves from under the upper one by which it was covered before, fills up the interstices, and the aperture is competely and exactly closed.

a horizontal valve, the weight of which will be sufficient to close it, and exclude the colder air on the outside. When lifted up by the stream of heated air from within, the efflux of that air will be sufficient to prevent the influx of the colder air from without.

Why, instead of a single hole in the brick-work, a tube, and that running to such a height?—For two reasons: that it may not afford a means of secret converse between the cells; and that the air which has been breathed in the cell below may not be conveyed to any part, in which it would be liable to be breathed again, of the cell above: it is accordingly discharged as high as possible above the level of the organs of respiration.

Should the precaution be deemed necessary, a few slight bars might be disposed in such a manner as to prevent a prisoner from introducing his head or ear near enough to the mouth of the tube to gain an opportunity of converse. But frugality forbids the being at the expense of these bars, before experience has shown the need of them. The probability is, that no such need would ever occur; since a man could not make use of the aperture of the tube for speaking, without mounting upon something, nor mount upon any thing for that purpose without subjecting himself to a great chance of being observed. Nor then would it avail him anything, unless the person to whom he addressed himself in the cell above or underneath were elevated and occupied in the same manner at the same time, which, without doubling the chance of detection, could not be. Add to which, that if there be more than one in either cell, they too must be privy to the intercourse; and in a situation like this, privity without disclosure may in justice, and ought in policy, to be put, in respect of punishment, upon a footing with complicity.

The level at which the warmed air was discharged could not be too low: the only spot in which there can be a certainty of placing it without inconvenience is the floor of the intermediate area and the space under the lodge. Thus situated, the tube would not be above seven or eight feet below the level of the floor of the lowermost story of the cells which are to be warmed by it. If it were in the ceiling, it would be already three or four feet above them, and before it could cross the intermediate well, would have been carried still higher. If it were anywhere between the floor and ceiling, it would be in the way, and stop the passage, unless it were considerably higher than a man's head, and then it would require pillars here and there to support it. To sink it to that level, either the stoves themselves might be sunk down accordingly, or a *perpendicular* tube might drop from the warming-chamber to join the *radial* tube. The former expedient seems the most economical and the most simple.*

It might perhaps be no bad economy to have a sort of *curtain* for the annular sky-light, to cover it as soon as the lights are lit in cold weather. When not used, it might be kept coiled up on rollers, at the upper part of the sky-light, that is, at the part where it joins the roof of the inspection-tower, and from thence drawn down over and across the annular well, and fastened by rings to ranges of hooks inserted a little above the interior windows of the chambers over the cells. It might be of the thickness and texture of the warmest sort of blanketing. It would be assistant to warmth, not only by keeping the air from impinging against the glass of the sky-light, and there discharging its heat, but likewise by stopping the current, and directing it towards the cells. The sky-light, it should be observed, must unavoidably be secured by innumerable crevices, one between every two panes: for in that situation, in order to prevent their cracking by the vicissitudes of temperature, the panes, instead of being fixed in the frame, and the crevices stopped with putty, must be placed so as to lap over one another, without any thing to close the chinks.

Provision remains yet to be made for the lodge. This might be effected by a small tube running from each of the stoves. It need be but a small one; for the warmth yielded by the supports themselves through which the smoke is passing, cannot but be considerable. Not improbably it would be sufficient. If upon trial it should prove otherwise, it would be easy to add the tubes. To distribute the heat the better, and assist the ventilation, they should open at the circumference of the room, but just above the floor, alternating with the chimneys. The air, as fast as it was heated by the chimneys or by respiration, would, together with the heated air from the tubes, make its way out at the central aperture. There would be no danger either of phlogistication from the iron, or want of ventilation. The utmost heat which the smoke could impart to the chimneys would not be considerable enough to produce the former inconvenience, and the central aperture is a sufficient security against the latter.

Were it not for the distance there is between the spot where the air receives its heat,

* True it is, that though the air when heated will not naturally descend, yet sudden gusts may carry it even in that direction, besides that the heat of every stratum of air will of itself in a certain degree be communicated to every stratum of air that is contiguous. But these are assistances too inconsiderable to be adequate to the purpose. They would still leave a great disparity between the temperature of the lowest story and those above it.

and the apartments for which it is wanted, it is evident the *discharging-ducts* could not be too short; since the more extensive they are, the more of the heat they absorb.

As to the inspection-galleries—being immediately over the spot at which the discharge of the heated air is effected, they can be at no loss for a supply: it is but leaving here and there in the floor an aperture capable of being closed at pleasure. Indeed, it matters not how thin the floors of those galleries are: if of mere boards, the mere crevices might answer the purpose.

From whence shall the air be admitted into the warming-chambers of the stoves? From the entrance, by an admission-duct—a sort of an *aeriduct*, if the term may be allowed, appropriated to the purpose. In general, this is a point very little attended to. Air of some sort or other will be found everywhere, and any sort, it is thought, may serve. Air already within the building might even be taken in preference; since by the stay it has made there it has already acquired some heat. But if the dependence is on what draws in through doors and crevices, there can be no air any further than in proportion as there is an influx of cold air at all those inlets. The cold air that comes in at the crevices will in most instances find its way to the bodies of those whom it is intended to keep warm: that which comes in at the doors will in every instance. But if a supply, adequate to the evacuation kept up by respiration and other causes, is introduced through the warming-chambers, no such influx of cold air will take place.

This aeriduct, then, will be nothing but a flue similar to those employed for conveyance of the smoke in hot-houses. Short tubes of iron will serve for its junction with the warming-chambers. The quantity thus drawn in can scarcely be sufficient for respiration;* if it were, the deficiency might be made up by tubes discharging the cold air at a height above the heads of the inhabitants, and pointing upwards.†

The Penitentiary-act puts an inexorable negative upon all this contrivance. Accord-

* The quantity thus requisite is easily ascertained. The quantity of fresh air necessary to support a man without inconvenience for a given time, has been pretty well determined. This quantity, multiplied by the greatest number of inhabitants the building can ever inclose at the same time, would give the quantity of fresh air requisite for the supply of the building during that time.

† Another use, which, though collateral to the above design, is not the least considerable of the advantages that might be reaped from it, is the opportunity it would afford of a set of experiments relative to the economy of heat. With the least quantity and expense of fuel possible, how to produce and support for a given time a given degree of heat, applicable to the several purposes for which heat is required? Such is the problem to be solved: a subject which has never yet been taken up upon principles, or upon a large scale. Of what importance the solution of such a problem would be to the population and wealth of nations, may be seen at a single glance. Fuel of the fossil kind is a limited resource; the nation which consumes it lives upon a capital which must sooner or later be exhausted. The population of a country in which artificial heat is a necessary of life must therefore ultimately depend upon the quantity it can keep up of such sort of fuel as can be obtained from the vegetable kingdom, the only sort which is capable of being regularly reproduced.

The facilities which a building upon the panopticon principle would afford for experiments in this view, will readily be apprehended. In the seven stoves, without putting more than one to each chimney it admits of, trial might be made of so many different forms. The *ventilative* mode would of course be taken for the common basis: but this ground-work is susceptible of a great variety of modifications. The construction pursued by Messrs. Moser and Jackson, with all its superiority over all preceding methods, may yet be found to fall considerably short of perfection in this line. Doubling the warming-chamber occasions a great consumption of fuel, and renders this mode of warming far from being so cheap as could be wished. Could not the same degree of extra heat be given to a building by a less degree of ignition given to a larger quantity of air? For, as Dr. Fordyce has clearly demonstrated to me, the less the degree of heat which the air contracts in the warming-chamber, the better, for very material reasons. Reducing the degree of heat given to the air by augmenting the quantity of air to which heat is given, could not there be found some single substance of which a warming-chamber might be made, without the addition of another receptacle to line or to inclose it? Is it most advantageous to make the warming-chamber *divided* into partitions, as practised by Moser and Jackson, or *entire*? and if entire, to what extent can such a warming-chamber be carried to advantage? What is the most advantageous form for the warming-chamber, and what the most advantageous mode of applying the fire to it, and connecting it with the fire-place? The relation being ascertained between a degree of heat as indicated by the thermometer on the one hand, and the expansive force on the other, and thence the velocity of current, and quantity of air so heated, discharged out of a mouth of known dimensions within a known time, could not a given degree of heat be secured at pleasure to the air thus discharged, by closing the mouth with a valve loaded by a weight, which would thus indicate and express by pounds and ounces the several degrees and quantities above mentioned, and consequently the calefactive powers of the stove? Such are among the questions which the inquiry would have in view. Hitherto, partly for want of science, partly for want of a proper theatre for experiment, whatever has been done by artists in this line has been little more than random guess-work. Means might not improbably be found, in some such way as above hinted at, of ascertaining *a priori*, I mean previously to any trial made in the particular building to be warmed, the calefactive power of a given stove, that is, the quantity of air heated to a given

ing to that act, all penitentiary-houses must absolutely be warmed, "dried and moderately warmed in damp or cold weather," "by flues," and these flues must come "from the flues in the kitchens, and other public fires belonging to each house."*

The invention of Messrs. Moser and Jackson, as well as all other inventions, past, present, and to come, that make no use of flues, is here rejected, seven years before it was ever thought of. I must be allowed a word or two in behalf of these ingenious artists: I am a co-defendant with them — a partner in their guilt. The same statute which prohibits their mode of warming a penitentiary-house, proscribes my mode of building one, and my mode of managing one, in almost every circumstance. What has the service been a gainer by this rigour? We shall see. Economy, I presume, and that alone, was the power that dictated it. Humanity, however peremptory she might be in her injunctions that felons should have warm bed-chambers, would not of herself have been thus particular about the mode.

On the kitchen fires, which are put foremost, seems to be the grand reliance: the other public fires seem rather to be thrown in as make-weights.

That economy could draw much advantage from this source will not, I believe, seem very probable to any one who may have cast an eye over one of the preceding pages. A Panopticon Penitentiary-house is a *room*: this statute Penitentiary-house was to have been a *town*, with streets in it. In the room, this resource seemed to amount to little: what would it amount to in the town? I would as soon think of warming London by the fires of the tavern kitchens.

Thus, then, stands the economy of the contrivance. That the bed-chambers may be economically warmed by flues from kitchens, kitchens and kitchen fires, and so forth, are to be multiplied till there are enough of them for the bed-chambers. Could the new-invented stoves be employed on any terms under this act? By prescribing the one mode, does it peremptorily proscribe the other? Would an indictment lie, or only a *mandamus?* — This is more than I would presume to answer. But what must be done at all events, or the positive injunctions of the law disobeyed, is — to build the kitchens. That done, and whatever degree of heat is necessary being produced in that way, whatever degree is not necessary, might perhaps be produceable in the most economical manner by the new-invented stoves.

A little lower we shall see more of these culinary laws: but the virtue of the present one is not yet exhausted. To decide this, as well as all other questions relative to the construction of the building, three superintendents are employed. Suppose the three (no very unnatural supposition) to have taken up each of them a different system about warming: one a patron of the ingenious artists above mentioned; another a disciple and partisan of Dr. Franklin's; the third an adorer of the memory of the departed sage to whom this statute is so much indebted, and an inexpugnable defender of the letter of the law: so many superintendents, so many irreconcilable modes of warming the house. How would they agree? — As the three original superintendents did about the place where it was to be put.

The error lies, not in regulating badly, but in regulating at all. Economy, household economy, is the child of the hour: it changes with prices, which change with the progress of ingenuity, the course of taxation, the copiousness of supply, the fluctuations of demand, and a thousand incidents besides. Meddling with matters like these the legislator will probably be wrong to-day; he will certainly be wrong to-morrow.

Were I obliged to make a law about heat, I would rather enact the degree, than the mode of producing it. *In no cell shall the heat be suffered to be fewer than such a number of degrees, nor more than such another number, above the freezing point in such or*

degree, which it is capable of yielding to that or any building within a given time. This indication being obtained, the several calefactive powers of different stoves might be compared while they were at work at the same time, whereas without it the comparison could no otherwise be made than by setting them to work in the same building at different times. The species and quantity of fuel employed in the different stoves, the temperature of the air in different parts of the building, and of the atmosphere without the building during the whole continuance of the experiments, —these or other influencing or resulting circumstances would need to be carefully marked and registered. In the same way, the comparative calefactive powers of different sorts of *fuel* might also be ascertained. I have already hinted at the inquiries that might be made relative to the application of the heat to baking, boiling, and other domestic operations—not to mention those which, like malting, brewing, and distilling, are conducted upon a more extensive scale. Were a course of experiments to be carried on with any such views, on so new and so peculiarly favourable a theatre, it might be of use that the plan of operations should be made public beforehand, that such lights and instructions as might be obtainable from the philosophical world might be collected before the commencement of the course. Philosophy is never more worthily occupied, than when affording her assistances to the economy of common life: benefits of which mankind in general are partakers, being thus superadded to whatever gratification is to be reaped from researches purely speculative. It is a vain and false philosophy which conceives its dignity to be debased by use.

* 19 Geo. III. c. 74, § 33.

such a scale. Insure this degree, you whose business it is, as cheaply as you can. Is the temperature thus fixed upon a proper one? It will not be less so a thousand years hence. Minuteness might be objected, but not improvidence.

To what end this economy all the while? — That felons may have fires, or what is equivalent, in their bed-chambers. I say in their bed-chambers. For in these cells they are to do nothing but "rest:"* this is carefully provided: other apartments are to be given them for working-rooms and dining-rooms.† Fires in bed-chambers for felons? Is it every gentleman whose bed-chamber has a fire in it, or so much as a place to make one? In the coldest and dampest weather, is it altogether universal, even in the most opulent families, to have a fire to go to bed by?

"And have not your felons, then, this luxury?" Yes; that they have—and glad I am they have it. Why?—because it costs nothing: they have no other rooms than their bed-chambers. Is it that they may have warm rooms to sleep in? No; but that such of them as are employed in sedentary trades, may work and sit comfortably in the short intervals of their work, instead of shivering in forced and comfortless inaction. By night as well as by day, they work as long as health and ease permit. They are not, like some we shall see hereafter, compelled to laziness beyond that of the laziest child of luxury—chained to their beds by law.

SECTION XXIV.

OF THE ECONOMY OBSERVED IN THE CONSTRUCTION.

It may be reduced to three principal heads: 1. Making the same apartment serve for every thing; 2. Making the cells capable of serving for two, three, or four inhabitants, instead of one; 3. Making them no larger than is necessary.

1. Six several modes of action or existence are incident to the persons for whose reception the building is particularly designed: *to work, to eat, to sleep, to pray, to be punished*, and *to be nursed*. One and the same place serves my prisoners for all of them. If the restriction is severe, it is not unexampled. In our own three kingdoms, it is the lot of many hundred thousands, perhaps of some millions, of better men.

I see nothing that should hinder a man from working where he eats, working where he sleeps, eating where he works, eating where he sleeps, sleeping where he works, or sleeping where he eats. All this, and more, it has more than once happened to myself to do in the same room for a considerable time together, and I cannot say I ever found any bad consequence from it.

I conceive it not altogether impossible for a man, nor even for a Christian, to pray where he does all this: Christ and his apostles did so. Synagogues excepted, neither Christ nor his apostles knew what it was to pray in any consecrated place.

Not that for all this I have any objection to that rite. It seems neither difficult to show that it does service to religion, nor easy, if possible, to show that it does disservice.

In my plan, I accordingly admit a consecrated space, and that by no means a confined one—a place in which no operation that does not minister to religion shall be carried on. All I contend for is, that it is not necessary that the prisoners should themselves be situated in that place—that it is sufficient to every purpose, if, without being situated there, they see and hear what passes there. The place where the minister is situated, and where the more considerable part of the auditory are situated, the place to which the eyes and the thoughts of the prisoners are turned, is holy ground.

As little reason do I see why the same place should not serve them for being punished in. Separate apartments for this purpose are surely, of all luxuries, one that can best be spared.‡

As to nursing, whether, upon the common plans of construction, separate rooms for that use were necessary, is not strictly to the purpose here. The bed-chambers being all single ones, I do not immediately apprehend what advantage the patients were to get by being removed out of those rooms into others, unless it were that of having fires in their rooms—a benefit which, without shifting their quarters, they might have received from portable stoves. A portable stove not only costs less than a room, but is sooner made. Were the infirmary-rooms at any time to be filled, it would be rather an awkward circumstance

* Section 33. † Ibid.

‡ At Westminster school, two brothers once upon a time were caught straggling out of bounds. For their chastisement, their father, a character not unknown in those days, caused two ferulas to be made on purpose. The scene of each culprit's transgression was inscribed upon the instrument of his punishment; and care was taken, that in the correction of him who had strayed to St. John's, the ferula should not be employed which was destined to wipe out the guilt that had been contracted in Tothill-Fields. I remember the boys, the father, and the sticks. The mode of chastisement was, it must be confessed, striking enough: but was it a necessary one? As necessary, at least, as it would have been to have built rooms to punish them in. And of the two contrivances, building a room, and engraving a couple of words upon the head of a stick—which is the most expensive?

for a patient in a high fever to wait for attendance, till an additional infirmary could be built and in readiness to receive him. At Moser and Jackson's, a good portable stove may be had upon the purest principle for 3½ guineas, ready made; stoves of inferior quality, and less elaborate contrivance, probably at a still cheaper rate.

But be this as it may in the Penitentiary-town designed by the act, in a Panopticon Penitentiary-house nursing-rooms on purpose would be unnecessary beyond dispute. Rooms better adapted to that use than every cell is of itself, or even so well, can hardly be shown anywhere. By nursing-rooms on purpose, I mean rooms which, when they are not put to this use, are not put to any other. For as to particular cells, more particularly well suited to the purpose of an *infirmary* than other cells, such have already been pointed out, and under that very name;* but the convenience they would afford to the sick is no reason why, when there are no sick, they should remain unoccupied. Indeed the whole of the upper story of cells is peculiarly well adapted to this use. None of the air that has visited any one of these cells, ever visits any other part of the whole building; and being so much nearer than any others to the roof, they can receive a portable stove and its chimney, with so much the less inconvenience and expense.†

All these different sets of apartments the Penitentiary act supposes — all but one, the dining-rooms, it expressly orders.‡ I see no mention in it of powdering-rooms.‖

On the common penitentiary plans, each prisoner must at any rate have a sleeping-room to himself. Why? Because, being under no sort of inspection or controul during the hours allotted for sleep, which under the common management occupy the greatest part of the twenty-four, even two, much more any greater number, might prompt and assist one another in plotting to escape. But the rooms they sleep in might at some times be too cold for working in, or they would not hold the machines which it is thought advisable to employ — or their work requires that they should be under the eye of an inspector, which they cannot be in these rooms: therefore there are to be other rooms for working in.

Have any notions about health and airiness contributed to this opinion about the necessity of different rooms for the different parts of the twenty-four hours? I am not certain, though something to this effect I think I have observed in the publications of Mr. Howard. But even under the common Penitentiary discipline, I should not think any such multiplication necessary, much less under the plan of management here proposed. To how many hundred thousands of his Majesty's honest subjects is such luxury unknown! Even among persons somewhat above the level of the lowest class, what is more common than to have but one room, not only for one person, but for a whole family—man, wife, and children? and not only working, and sleeping,

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* Section 6, *Dead-part.*

† A separate infirmary for a Panopticon Penitentiary-house? I would not desire such a thing even for the plague. Guarded by proper regulations, I should not have the smallest apprehension of inhabiting the inspection-tower, while the cells were filled by patients dying of that disease. How much less would there be to fear, where the only danger is a possibility of its importation by goods or passengers on account of the country from which they come! A Lazaretto may accordingly be added to the number of the establishments to which the panopticon principle might be applied, under some variations, to signal advantage. On casting an eye over the *Table of ends and means* at the end of this volume, the reader will easy distinguish such of the latter as are applicable to this purpose: he will also distinguish with equal facility such of the expedients as, being adapted to opposite purposes would require to be discarded or changed. As to comfort, amusement, luxury in all its shapes, it is sufficient to hint that there is nothing of that sort that need be excluded from such an hotel, any more than from any other. But everything of luxury apart, what would not Howard have given for a cell in a Panopticon Penitentiary house as here described, instead of the apartment in the Venetian Lazaret, the stench of which had so nearly cost him his life?[a]

I must not dwell in this place on a subject of so confined a nature, and so foreign to the present purpose. I will only just add, that the plan of warming, as here described, would afford a method peculiarly advantageous of airing the cotton wool, which is the great and dangerous article in the Levant trade. Laying the cotton in light strata upon numerous and shallow stages, in sheltered warehouses, occupying the ground-floor of the cellular part of the building, it might easily be so ordered, by flues or pipes leading from the back part of those stages to the stoves in the inspection-tower, that not a particle of air should visit the fire in the stoves, that had not made its way through the cotton on the stages. The ventilation, besides being so much more perfect, not depending, as it must otherwise, upon the uncertainties of the weather, the continuance of this irksome and expensive probation might be so much the shorter.

[a] Howard on Lazarettos, p. 11.

‡ Not exactly so. Meals, for aught I see, might be made in the working-rooms: they cannot, however, in the sleeping-rooms. — § 33. I am not certain whether Mr. Blackburne put dining-rooms in his plans: I think I have heard he did. Two chapels I know he had put in for the National Penitentiary-house — one for each sex — but struck out one of them upon its being suggested to him that it was possible for the two sexes to be in the same place at different times.

‖ I was once much pressed to put a tennis-court in my plan; for felons have not less need of exercise than honest men. Powdering-rooms are more common, and would be less expensive.

and eating, but cooking to be performed in it? Among the Irish cottars, as we learn from Mr. Arthur Young, that is, among the bulk of the Irish people, one room is the only receptacle for man, wife, children, dog, and swine. Has that one room so much as a single window in it, much less opposite windows, or any aperture but the door? In towns where one room forms the sole dwelling-place of a whole family, has not that room closed windows in it? Is there any commanding power to enforce the opening of any of those windows? does not the aversion to cold forbid it? Are they so much as capable of being opened, if at all, for more than half their length, and that the lower half?*

Let me not be mistaken. Far be it from me to propose the manner in which the common people live through ignorance, as a proper model to be pursued by those who have the good fortune to be possessed of more intelligence;—far be it from me to insinuate that a bad regimen ought to be prescribed, only because it is practised;—all I mean is, that the degree of airiness most frequent in the dwellings of the greater part of the people is inferior, and much inferior, to that which might be obtained without multiplication of rooms, even according to the hitherto received mode of construction for penitentiary-houses, and according to the mode of management hitherto pursued in them. In prisons even so managed, the inhabitants would not, in this respect, be worse off, but much better off, than the common run of men at liberty. Yet even in this respect, how inferior are some of the most approved plans of construction, in comparison of the one now proposed! † There, when you shut out rain or snow, you shut out air: here, rain or not rain, windows open or not open, you have fresh air in plenty—in much greater plenty than is usual in a palace.

2. Of such part of the saving as results from the substituting a steady plan of mitigated seclusion in small apartments, to an alternation of solitude and promiscuous intercourse, nothing farther need be said here: it has been fully vindicated in a preceding section.

3. Of the waste of room observable in the common plans, a great part is to be placed to the account of *height*. Not more than eleven feet, but not less than nine, is the height prescribed by the Penitentiary act.‡ The Wymondham-house takes the medium between these two extremes.‖ Waste it may well be called. I suspected as much at the time of writing the letters: I speak now with decision, and upon the clearest views. In respect of health, height of ceiling is no otherwise of use, than as a sort of succedaneum to, or means of, ventilation. In either view, it is beside the purpose: as a succedaneum, inadequate; as a means, unnecessary. If your air, indeed, is never to be changed, the more you have of it, the longer you may breathe it before you are poisoned: this is all you get by height of ceiling. But so long as it is undergoing an incessant change, what signifies what height you have? Take a Panopticon penitentiary-house on one hand, and St. Paul's employed as a penitentiary-cell, on the other: let the Panopticon, aired as here proposed to be aired, and warmed as here proposed to be warmed, contain 4 or 500 prisoners; let St. Paul's, hermetically closed, have but a single man in it; the Panopticon would continue a healthy building as long as it was a building; in St. Paul's, the man would die at the end of a known time, as sure as he was put there.§

In this one article we may see almost a half added to the expense in waste. Ten feet from floor to ceiling, when less than seven feet would serve!—when less than seven feet does serve, and serves to admiration! I am almost ashamed of the eight feet I ask: it is for the mere look's sake that I ask it. The experiment has been tried: the result is known, though not so well known as it ought to be. Have the *hulks* ten feet of height?—have they eight feet?—have they seven? I look at Mr. Campbell's *hulks*, and to my utter astonishment I see that nobody dies there. In these receptacles of crowded wretchedness, deaths should naturally be more copious than elsewhere. Instead of that, they are beyond

* Were ventilation the object, the upper sash would be the one to open in preference, especially where the highest part of the lower one is not above the level of the organs of respiration. Were it not for accidental gusts, so much of the air as is above the aperture might remain for ever unchanged. It may perhaps have been partly on this consideration, that in Mr. Howard's and the Wymondham plans, the holes serving for windows are placed so high.

† Supra, p. 96.

‡ Sect. 33.

‖ Supra, p. 96.

§ In the Letter on Hospitals, the reader may recollect what is said in commendation of an idea of Dr. Marat's with respect to ventilation, and the form of construction proposed by him in consequence. What he says is very just, as far as it goes: but the truth is, that so long as proper air-holes are made, and proper means employed for determining the air to pass through them, there is no form but may be made as ventilative, and by that means as healthy as his. At that time I had never experienced the heartfelt satisfaction I have since enjoyed, of visiting a London hospital. I had not then seen either St. Thomas's or Guy's. I had no idea of the simple yet multiplied contrivances for ensuring an unremitted yet imperceptible change of air, nor the exquisite purity and salubrity that is the result of them. If I had, I should little have thought of sending Englishmen to France, or any other country, for hospital practice or theories of ventilation.

comparison less so. I speak from the reports. I know not the exact proportion; my searches and computations are not yet complete; but as to so much I am certain. I speak of the ordinary rate. Now and then, indeed, there comes a sad mortality.— Why? — because where pestilence has been imported, hulks neither do nor can afford the means of stopping it. But, bating pestilences, men are immortal there. Among 200, 300, quarter after quarter, I look for deaths, and I find none—Why? —because Mr. Campbell is intelligent and careful, Pandora's cordials unknown there, and high ceilings of no use.

This experiment is new matter: it is no fault of the legislators, of whom I speak, not to have made use of it. In their time it did not exist: how should it? It was this very statute of theirs that produced it. While they were building their penitentiary-castle with one hand, they little thought how with the other they were cutting the ground from under it. The information does exist now: the fault will be not theirs, but that of their successors, if, like the Wandsworth purchase, the knowledge thus acquired lies in waste.

Mention not the mortalities: it is impossible they can have had the low ceilings for their cause. The mortalities have been rare: for these three or four years none; from that period immortality begins. Have the ceilings been higher since that time? Had Captain Cook ten feet, eight feet, seven feet between decks? — Captain Cook, under whom, in a voyage that embraced all the climates of the globe, out of 80 men not a single one died in a space of between four and five years?* Out of 112, in the same time, but five, nor of those more than two in whom the seeds of death had not been sown before their embarkation?

What was your National Penitentiary-house to have cost? £120,000. — *How many was it to have holden?* 960.— *What did your Liverpool Jail cost? About* £28,000.—*How many will that hold?* 270. —*What! make the nation pay* £120 *for what you have done for* £100? *How comes that about?—How? Why, from the Act: the Act will have high ceilings — how could I lower them? — the Act will have spacious rooms — how could I narrow them? The King was to pay for every thing: every thing was accordingly to be upon a royal scale. At Liverpool it was otherwise: those who ordered were to pay.*—Such was the purport of a conversation I had with Mr. Blackburne.

* Four years, two months, and 22 days. See Cook's Second Voyage, Introduction.

POSTSCRIPT—PART II.

PRINCIPLES AND PLAN OF MANAGEMENT.

SECTION I.

LEADING POSITIONS.

THIS surely is no place for anything like a complete and regular system of prison-management. Such an enterprise would have been above my strength. It would have required opportunities which I have not possessed, and time more than at present can be spared.

A work of this kind is, however, still to execute. Mr. Howard's publications present no such work. They afford a rich fund of materials; but a quarry is not a house. No leading principles — no order—no connexion. Rules, or hints for rules, in places which, unless by reading the book through again, you can never find a second time; recommendations, of which the reason is not very apparent, and for which no reason is given; some perhaps for which no sufficient reason, if any, could be given. My venerable friend was much better employed than in arranging words and sentences. Instead of doing what so many could do if they would, what he did for the service of mankind, was what scarce any man could have done, and no man would do but himself. In the scale of moral desert, the labours of the legislator and the writer are as far below his, as earth is below heaven. His was the truly christian choice; the lot, in which is to be found the least of that which selfish nature covets, and the most of what it shrinks from. His kingdom was of a better world; he died a martyr, after living an apostle.

To please everybody, is acknowledged to be in no instance a very easy task. There are perhaps few instances in which it is less so than this of penitentiary discipline. There are few subjects on which opinion is more under the sway of powers that are out of the reach of reason. Different tempers prescribe different measures of severity and indulgence. Some forget that a convict in prison is a sensitive being; others, that he is put there for punishment. Some grudge him every gleam of comfort or alleviation of misery of which his situation is susceptible: to others, every little privation, every little unpleasant feeling, every unaccustomed circumstance, every necessary point of coercive

discipline, presents matter for a charge of inhumanity.

In the midst of these discordant sentiments, this promiscuous conflict, in which judgment and regulation are so apt to be led astray, sometimes by the negligence of insensibility, sometimes by the cruel anxiety of cowardice, sometimes by the excess of tenderness, and now and then perhaps by the affectation of it, a few leading positions, if by good fortune any such should be to be found, to which men of no description whatever, be their degree of judgment or cast of temper what it may, shall find it easy to refuse their assent, will not be without their use: unfortunately, the application of those principles will still leave but too wide a field for uncertainty and variance. But even in case of variance it will be something to have placed the question upon clear ground, and to have rendered it manifest to every eye on what point it turns, whether the disagreement is an irremediable one, or whether any means of putting an end to it may be hoped for from farther investigation.

But, in the first place, a summary view of the objects or ends proper to be kept in view in the planning of such a system may not be without its use. They may be thus distinguished and arranged:—

1. *Example*, or the preventing others by the terror of the example from the commission of similar offences. This is the main end of all punishment, and consequently of the particular mode here in question.

2. Good behaviour of the prisoners during their subjection to this punishment; in other words, *prevention of prison offences* on the part of prisoners.

3. *Preservation of decency*, or prevention of such practices in particular as would be offences against decency.

4. Prevention of undue hardships; whether the result of design or negligence.

5. *Preservation of health*, and the degree of *cleanliness* necessary to that end.

6. *Security against fire.*

7. *Safe custody*, or the prevention of escapes, which, as far as they obtain, frustrate the attainment of all the preceding ends.

8. *Provision for future subsistence;* i. e. for the subsistence of the prisoners after the term of their punishment is expired.

9. *Provision for their future good behaviour*, or prevention of future offences, on the part of those for whose former offences this punishment is contrived. This is one of the objects that come under the head of *reformation.*

10. *Provision for religious instruction;*—a second article belonging to the head of *reformation.*

11. *Provision for intellectual instruction and improvement* in general;—a third article belonging to the head of *reformation.*

12. *Provision for comfort;* i. e. for the allowance of such present comforts as are not incompatible with the attainment of the above ends.

13. *Observance of economy;* or provision for reducing to its lowest terms the expense hazarded for the attainment of the above ends.

14. *Maintenance of subordination;* i. e. on the part of the under officers and servants, as towards the manager in chief—a point on the accomplishment of which depends the attainment of the several preceding ends. No one of these objects but was kept in view throughout the contrivance of the building; none of them that ought to be lost sight of in the contrivance of the plan of management. The management was indeed the end: the construction of the building but one amongst a variety of means, though that the principal one.

I may perhaps subjoin in the way of recapitulation, a general *table of ends and means*—a tabular view of the several expedients employed or suggested for the attainment of the above ends.

In the meantime, this summary enumeration of the ends themselves may serve to direct our attention, and afford us some guidance in judging of the proposed expedients as they present themselves; and incidentally of the regulations and expedients that have been established or recommended by others, either with a view to the same ends, or at least with relation to the same subject.

From the different courses taken in the pursuit of these several ends, or some of them, errors have been adopted, by which the lot of the persons devoted to this punishment has been affected in opposite ways: the treatment leaning, in some instances, too far on the side of severity; in others, too far on the side of lenity and indulgence. It is for the correction and prevention of such errors, that the three following rules are proposed, to serve as guides in the pursuit of the above enumerated ends. These are the leading positions above alluded to. Should their propriety be admitted, there is not a single corner of the management in which their utility will not be recognised.

1. *Rule of Lenity.*—The ordinary condition of a convict doomed to forced labour for a length of time, ought not to be attended with bodily sufferance, or prejudicial, or dangerous to health or life.*

2. *Rule of Severity.*— Saving the regard due to life, health, and bodily ease, the ordinary condition of a convict doomed to a punishment which few or none but indivi-

* The qualification applied by the epithet *ordinary*, and the words *length of time*, seemed necessary to make room for an exception in favour of temporary punishment for prison offences, at the expense of bodily ease.

duals of the poorest class are apt to incur, ought not to be made more eligible than that of the poorest class of subjects in a state of innocence and liberty.

3. *Rule of Economy.* — Saving the regard due to life, health, bodily ease, proper instruction, and future provision, economy ought, in every point of management, to be the prevalent consideration. No public expense ought to be incurred, or profit or saving rejected, for the sake either of punishment or of indulgence.

Propositions of such latitude may be thought to require a few words of explanation:— propositions of such importance may require something to be said in the way of justification. The precaution is not superfluous. The reader who feels himself interested in the subject would do well to scrutinize them. It is but fair he should have this warning; for if these are really fit to compose a test, no plan of management has yet been either pursued or proposed, that will abide it.

Injuries to health and bodily ease are apt to result principally from either that part of the management which concerns *maintenance*, or that which concerns *employment*. The supply for maintenance may be defective in quantity, or improper in quality: the labour exacted in the course of the employment may be improper in quality, or excessive in quantity.

What must not be forgotten is, that in a state of confinement, all hardships which the management does not preserve a man from, it inflicts on him.

The articles of supply necessary to preserve a man from death, ill health, or bodily sufferance, seem to be what are commonly meant by the *necessaries of life*. The supplies of this kind with which, according to the rule of lenity, every such prisoner ought to be furnished, and that in the quantity requisite to obviate those ill consequences, may be included under the following heads:—

1. Food, and that in as great a quantity as he desires.

2. Clothing at all times in sufficient quality and quantity to keep him from suffering by cold, with change sufficient for the purposes of cleanliness.

3. During the cold season, firing or warmed air sufficient to mitigate the severity of the weather.

4. In case of sickness, proper medicine, diet, and medical attendance.

5. In the way of precaution against sickness, the means of cleanliness in such nature and proportion as shall be sufficient to afford a complete security against all danger on that score.

The reasons against inflicting hardships affecting the health, and such privations as are attended with long-continued bodily sufferance, are —

1. That being unconspicuous, they contribute nothing to the main end of punishment, which is example.

2. That being protracted, or liable to be protracted, through the whole of a long and indefinite period, filling the whole measure of it with unremitted misery, they are inordinately severe; and that not only in comparison with the demand for punishment, but in comparison with other punishments which are looked upon as being, and are intended to be, of a superior degree.

3. That they are liable to affect and shorten life, amounting thereby to capital punishment in effect, though without the name.

Punishments operating in abridgment of life, through the medium of their prejudicial influence with regard to health, are improper, whether intended or not on the part of the legislator. In the latter case, the executive officer who subjects a man to such a fate without an express warrant from the judge, or the judge who does so without an express authority from the legislator, appoints death where the legislator has appointed no such punishment, and incurs the guilt of unjustifiable homicide, to say no worse of it.

If intended on the part of the legislature, they are liable to the following objections:—

1. They are severe to excess, and that to a degree beyond intention as well as proportion. Styled less than capital, they are in fact capital, and much more; the result of them being not simple and speedy death, as in the instances where death is appointed under that name, but death accompanied and preceded by lingering torture.

2. They are unequal; causing men to suffer, not in proportion to the enormity of their offences, either real or supposed, but in proportion to a circumstance entirely foreign to that consideration; viz. their greater or less capacity of enduring the hardships without being subjected to the fatal consequence.

Food is the grand article. It is the great hinge on which the economy of supply turns. It is the great rock on which frugality and humanity are apt to split. Food ought not to be limited in quantity, for this reason:— Draw the line where you will, if you draw it to any purpose, the punishment becomes unequal. Unequal punishment is either defective or excessive: it may be in both cases at once; but in one or the other it cannot but be. In the present instance, the sole result of the inequality is excess: so many as the allowance fails to satisfy, so many are subjected to an additional burthen of punishment foreign to the design. Draw the line where you will, you can never draw it right useless or improper is the only alternative it is only in proportion as humanity loses, that frugality can gain by it. Pinch many, and those hard, your line is proportionably un

equal and unjust: pinch few, and those but slightly, what you save is but little, and you serve Mammon for small wages. The inequality is all sheer injustice; it has no respect at all to conduct: the punishment proportions itself, not to the degree of a man's delinquency, but to the keenness of his appetite. It is not the injustice of a day, nor of a week, but of whole years; and the weight of it rather accumulates than diminishes by time. As the quantity of food desired by a man, living in other respects in the same manner, is pretty much the same, if the measure falls considerably short of any man's desires any one day, so will it every other: as his hunger would not cease even at the conclusion of his meal, much less will it during any part of the interval betwixt meal and meal: the consequence is, that the whole measure of his existence is filled up with a state of unremitted, not to say increasing sufferance.

I have distinguished this mode of producing sufferance from an injury to health, merely not to strain words: but the difference is but in words. If a man experience a constant gnawing of the stomach, what difference is it to him whether it comes from improper food, or from want of food? If a constant shivering, what matters it whether from an ague, or from want of fire?

By this violation of the law of lenity, true economy does not gain near so much as at first sight might appear. That a man who is ill fed will not work so well as a man who is well fed, is allowed by everybody. But the great cause that prevents economy from gaining by this penury is, that what is grasped with one hand is squandered with the other. Those who limit the quantity of food, neither confine the quality to the least palatable, which is in a double point of view the cheapest sort, nor avoid variety and change. Provocations are thus administered, while satisfaction is denied; and what is saved by pinching the stomach is thrown away in tickling the palate. Make it a rule to furnish nothing but of the very cheapest sort, and if there should be two sorts equally cheap, to confine the men to one, you need not fear their eating too much. Every man will be satisfied: no man will be feasted, no man will be starved.

This abundance will be no violation of the rule of severity. The lot of delinquents will not be raised above that of the innocent at large, except in as far as the latter is sunk below the ordinary level by accidental imprudence or misfortune. All men in a state of innocence and liberty do not in fact enjoy a full supply of necessaries. True: but there are none but what might, if they would dispense with luxuries. The deficiencies produced by accidental misfortune are supplied by public bounty; and, bating such accidents, the wages of labour, at the lowest rate known in the three kingdoms, are such as will leave nothing to desire on the head of real necessaries.* To the extent of their means, the poorest enjoy, at any rate, the liberty of choosing.

This economy wil. be no violation of the rule of lenity: though superfluous gratifications be so far denied, no bodily sufferance is produced. The privation is not carried beyond the bounds which the rule of severity prescribes. While so many honest men fail of being satisfied in quantity, why should criminals be indulged in quality?†

Nor does the rule of severity exclude a certain measure even of super-necessary gratification. The rule of economy, as we shall see, not only admits but necessitates the calling in the principle of reward; and reward might lose its animating quality, if it were debarred from showing itself in a shape so inviting to vulgar eyes. Nor, when all the luxury that economy can stand in need of is thus admitted, need there be any apprehension lest the rule of severity should be violated by the admission, and the lot of labouring prisoners be rendered too desirable. The irksomeness of the situation strikes every eye: the alleviations to it steal in unobserved.

Punishments affecting health, or life, by imposing on men the obligation of exercising any employment injurious in that way, are productive of the collateral inconvenience of imposing hardship on innocent men, by holding up the occupation they follow in an igno-

* See this abundantly proved by Dr. A. Smith in the Wealth of Nations.

† The privation, there is reason to think, is much more apparent than real. At the utmost, it can amount to no more than the loss of such part of the gratification as depends on relish: that which depends upon appetite remains untouched, being inseparable from the satisfaction of the demands of nature. This latter part is perhaps the more considerable; nor is the loss incurred on the other score sustained without an indemnification. In the pursuit of that part of the gratification which depends on relish, a great part of that which depends on appetite is habitually given up. Eating oftener, or more than they need, men eat with so much the less appetite. The poor give up one part of the gratification, the rich another. Whether the poor sustain any habitual loss, even in point of relish, is, after all, not altogether clear. The loss of the enjoyment of occasional feasting, is perhaps the only real loss sustained. In this, too, the poor are but upon a par with the richest class of all. Food affords a feast to those only to whom it is rare; those who appear to feast always, never feast at all. Confinement to the least palatable kind of food, so far, then, from being too severe a punishment, would be no punishment at all, were it not for some antecedent experience of better fare. What punishment is it to the Hindoo to be forbidden roast-beef, and to be confined to rice? How many dishes are coveted by the rich, that would be spurned at by the poor!

minious point of view, and disposing them to be discontented with their lot.

An occupation of this nature will hardly be imposed, but under the notion of causing to be done for the community, something or other which would not be done for it at all, or at least not so well or not so cheap, otherwise. But no occupation of that tendency can be assigned, which would not be, and, if the law permits, is not already, embraced by a sufficient number of free individuals, who being paid what, in their instance and according to their estimation, is an equivalent, carry it on by choice. Whether the work done by compulsion, is done, upon the whole, cheaper, for its goodness, than the work done voluntarily, is as it may be: but what is certain is, that those who submitted to it without regarding it as a hardship, find it converted to their prejudice into a hardship which it was not before.

As to the rule of economy, its absolute importance is great—its relative importance still greater. The very existence of the system—the chance, I should say, which the system has for existence, depends upon it. That in all other points of view this mode of employing criminals is preferable to any other, seems hardly to be disputed: but what men are afraid of is the expense. Let the rule of economy be steadily submitted to, and prudently turned to account, frugality will gain as much by the penitentiary system as every other end of punishment.

In such a situation, whatever expense is incurred, or saving foregone, for the mere purpose of adding to the severity of the punishment, is so much absolutely thrown away. For the ways in which any quantity of suffering may be inflicted, without any expense, are easy and innumerable. Instances of this waste have been already seen in a preceding section:* more will be found in a succeeding one.†

The measure of punishment prescribed by the rule of severity, and not forbidden by the rule of lenity, being ascertained, the rule of economy points out, as the best mode of administering it, the imposing some coercion which shall produce profit, or the subtracting some enjoyment which would require expense.

SECTION II.

MANAGEMENT—IN WHAT HANDS, AND ON WHAT TERMS.

ECONOMY, it has been already shown, should be the ruling object. But in economy, every thing depends upon the *hands* and upon the *terms*. In what hands, then? upon what terms? These are the two grand points to be adjusted, and that before any thing is said about regulations. Why? Because, as far as economy is concerned, upon those points depends, as we shall see, the demand for regulations. Adopt the contract-plan—regulations in this view are a nuisance: be there ever so few of them, there will be too many. Reject it—be there ever so many of them, they will be too few.

Contract-management, or *trust-management?* If trust-management, management by an *individual* or by a *board?* Under these divisions, every possible distinct species of management may be included. You can have nothing different from them, unless by mixing them. In an economical concern like this, contract-management, say I—Board-management, says the act: which says right? I. Who says so? The act itself. A principle is laid down; I adopt it: regulations are made; they violate it. What is the consequence? Error upon error, as well as inconsistency: error in preferring trust-management to contract-management; error in preferring board-management to trust-management in single hands: error in opposite shapes, both embraced at the same time. Trust-management appointed where nothing but contract-management was tolerable: contract-management preferred in the instance where, if in any, trust-management might have been harmless and of use.

By whom, then, shall we say, ought a business like this to be carried on?—by one who has an interest in the success of it, or by one who has none?—by one who has a greater interest in it, or by one who has an interest not so great?—by one who takes loss as well as profit, or by one who takes profit without loss?—by one who has no profit but in proportion as he manages well, or by one who, let him manage ever so well or ever so ill, shall have the same emolument secured to him? These seem to be the proper questions for our guides: where shall we find the answers? In the questions themselves, and in the act.

To join interest with duty, and that by the strongest cement that can be found, is the object to which they point. To join interest with duty, is the object avowed to be aimed at by the act. The emolument of the governor is to be proportioned in a certain way to the success of the management. Why? that it may be "*his interest*" to make a successful business of it, "*as well as his duty.*"‡ How, then, is it made his interest? Is he to take loss as well as profit? No; profit only. Is he to have the whole profit? No, nor that neither; but a part only, and that as small a part as gentlemen shall please. Well

* See Part I. Sect. 24. † Section *Employment.*

‡ 19 Geo. III. ch. 74. § 18.

—but he is to receive none, however, if he makes none? Oh yes; as much profit, and that as secure an one as gentlemen may think fit to make it. He may have ever so large a share of any profit he makes, or ever so small a share; and whether he makes any or none, he may have a salary, all the same. Let him get as much as he will, or get as little as he will, or lose as much as he will, or waste as much as he will, he is to have a salary for it, and in all these cases the same salary, if they please. All this in the same section and the same sentence which lays down the junction of interest with duty as a fundamental principle.

And whom does the management depend upon, after all? Upon this governor?—upon the man in whose breast this important junction is to be formed? Oh no: upon a quite different set of people: upon a committee. And who are this committee? A set of trustees, three in number, who would be turned out with infamy, if they were found to have the smallest particle of what is here meant by *interest* in the whole concern. *They* are the persons to manage, they are the persons to contrive, they are the persons to work: the governor, with his magnificent title, is to be their tool to work with. Upon them everything is to depend; upon his excellency nothing: he is their journeyman; they are to put him in, they are to turn him out, and turn him out when they please. Three "gentlemen, or other creditable and substantial persons,"* who are to come now and then, once in a *fortnight* or so,† as it suits them—sometimes one, sometimes another, when they have nothing else to do—these are the people who are to govern: the person who is to be nailed to the business, and to think of nothing else, the person upon whose shoulders the whole charge of it is to lie—the governor *a non gubernando, ut lucus a non lucendo*, is to be a puppet in their hands. As to *their* doing their duty, how that is to be brought about, seems not to have been much thought of. He, however, is to do his: that he may be sure to do it, it is to be made his interest; that it may be his interest, he is to have a motive given him for doing it, and that motive is to be a "*profit*" he is to have "*upon the work*." This profit—what is it, then, to depend upon? Upon his exertions? No: it is to be fixed by the committee; and whether, when fixed, it shall amount to anything, is to depend upon *their* management, upon their wisdom, their diligence, and their good pleasure.

Power and inclination beget action: unite them—the end is accomplished, the business done. To effect this union in each instance, is the great art and the great study of government. How stand they here? Instead of their being brought together, they are kept at arm's length. Power is lodged in one place, inclination in another: as to their ever coming together, if they do, they must find the way to one another as they can. The committee, with the inducements given to the governor, might have done tolerably: the governor, with the power given to the committee, better still. Which of these plans is pursued? Neither. The governor, thanks to the pains that have been thus taken with him, has all the inclination in the world to make good management of it; but as to the power, it is none of his. The committee have power in plenty: but as to inducements to give them inclination, they have none. At least, if they have any, it is not for anything the act has done to give it them: if they have any, it is to bountiful nature they are indebted for it, and to themselves. Taking such opposite courses, can the act be right in both? I don't see how. If it is not redundant in the one instance, it is deficient in the other. Sir Kenelm Digby invented a sympathetic powder: applied to one body, it was to cure wounds in another. The prescription here proceeds upon the same principle. Money is put into the hand of the servant, called a *governor;* and the reward thus applied is to operate upon the affections, and determine the conduct, of the masters—the committee. Under such a constitution, upon what does the chance it leaves for good economy depend? Upon the governor's writing orders for himself, and *their* signing them: upon their being pensioned by him, or acting as if they were.

When I spoke of their having the power, all I meant was, that what power is given, such as it is, is in their hands. But it is a power big with impotence. What is to be the number of this committee? Three, and three only. What if one of them should be ill, or indolent, or out of the way, or out of humour, and the two others should not agree? What is to be done then? Nothing. What then is to become of the establishment? It is to go to ruin. The prisoners are to sit with their hands before them and starve; for not a handful of hemp, no, nor a morsel of bread, can the governor buy or agree for, without the committee.‡ "Oh, but any two may act," says the statute, "without the other." Yes, that they may: and how is it to be done? The two who, by the supposition, cannot agree, are to agree which of them shall be chairman, in order that there may be one of them who shall have everything his own way.‖ For such is the constitution of this committee: an assembly of two, one of them with a casting voice.

* § 15. † § 45.

‡ § 21. ‖ § 15.

If two heads, while they remain two heads, cannot govern the smallest household, what will they do in so large a one? If division begets confusion in a family of three, what must it do in a family of thrice three hundred?

The complication was not yet thick enough. Clouds are heaped upon clouds—all to give shade and perfection to economy. I shall not, however, spend many words upon the orders and regulations that were to be made, all for the benefit of this infant plant, by a legislature composed of three estates: the governing committee, the justices of the peace in quarter-sessions, and the judges of assize, or, if in Middlesex, of the King's Bench: of whom the judges of assize were to listen to plans of household and mercantile management with one ear, while they were trying causes with the other, in a country through which they were riding post.—"Oh no, no:—it's your mistake: it was not to meddle with economy that the judges were called in—it was to check cruelty, to prevent negligence, to restrain mischievous indulgence, to enforce good morals." I do *not* mistake. It was for economy, and for nothing else. Had the hulks committees to regulate for them, or justices of the peace to check the committees, or judges to check the justices? Were the hulks more exempt from danger of cruelty, or negligence, or partiality, or corrupt indulgence, or bad morals? No: but on board the hulks there was no economy to nurse; so that courts of quarter-sessions, and judges of assize, and courts of King's Bench, would there have been of no use.

"But are not there establishments of a similar nature, actually governed by multitudes?" Yes, plenty: but why? because the multitudes, though such in show, are, in effect, reduced to one. So far as the multiplicity has its effect, it does mischief, and mischief it continually is doing: so far as it has no effect, it does none. The colleagues jostle and jostle, till they find out which of them is the strongest; the business goes on, when, like the serpent rods, one of them has swallowed up the rest. Sometimes, if the power be large enough to cut into shares, the battle ends by compromise: what was given in coparcenary, is used in severalty; and as nature will sometimes repair the errors of the physician, compact furnishes a palliative for the weakness of the law.

From such a constitution, what could have been expected? What has happened. A committee is appointed, and the first and only thing they do is to quarrel. The act for building the house passed in 1779: we are now in 1791, and still there is no house. They quarrelled before the first stone was laid, and before it was agreed where it should be laid: they quarrelled about that very question. But there could not have been a stone laid but what would have been just as capable of raising a quarrel as the first—no, nor a barrel of flour been to be bought, nor a bundle of hemp, nor a petticoat, nor a pair of breeches. The constitution being such as it was, the happiness was, that it showed itself so soon. Better the project should stop as it did, as soon as the ground was bought, than after £120,000 had been spent in covering it, and perhaps as much more in stocking it. "Oh, but it was by accident that it stopped." No; it was not by accident—it was by the nature of things; you have seen it was: it would have been by accident if it had gone on.

And does not management of all kinds go on, and go on very well, in *partnership?* To be sure it does: why? because common interest either keeps men together, or separates them in time. Agreeing, they cast their parts and divide the business between them as they find convenient: disagreeing, they can part at any time. Necessity compels the separation: ruin is the penalty of refusal.—How is it with a set of uninterested board-managers like the committee? Going, they lose everything: staying, they lose nothing—whatever comes of the trust.

Economy has two grand enemies: *peculation* and *negligence*. Trust-management leaves the door open to both: contract-management shuts it against both. Negligence it renders peculiarly improbable: peculation, impossible.

To peculate is to obtain, to the prejudice of the trust, a profit which it is not intended a man should have. But upon the contract plan, the intention, and the declared intention is, that the contractor shall have every profit that can be made.* Does the trust lose anything by this concession? No; for it makes him pay for it before-hand. Does he pay nothing, or not enough? The fault lies, not in the contract plan in general, but in the terms of the particular contract that happens to be made: not in the principle, but in the application.

As to negligence, to state the question is to decide it. Of whose affairs is a man least apt and least likely to be negligent? another's, or his own?

Economy being put under the guardianship of contract-management, what more is it in the power of man to do for it? It has the joint support of the principles of reward and punishment, both acting with their utmost force, and both acting of themselves, without waiting for the slow and unsteady hand of law. What the manager gains, stays with him

* This is to be understood only in as far as profit and loss is the avowed object. As to sacrificing to schemes of profit some other of the ends in view, such as good morals, proper severity, or proper indulgence, it forms a separate consideration, and will be spoken of in its place.

in the shape of reward: whatever is lost, falls upon him in the shape of punishment. In this way, public economy has at least all the support and security that private can ever have.

It has more: it has a support peculiar to itself — publicity; and that in every shape: at least it may have, and, as we have seen already, ought to have.* To publish his management, a man must attend to it; and the more particular he is obliged to be in his publication, the more particularly he must attend to it. What safeguard is there in private management, that can compare to this? It is not in human nature to go on for a length of time in a course of notorious mismanagement and loss. A man could not help seeing it of himself; and if he could, the public would not let him: he must mend his management, or quit the scene. False accounts he could not publish: what hope could he have of keeping the falsehood from discovery? The attempt to conceal mismanagement in this way would cost more trouble than to avoid it. To enable the public to look at his accounts, a man must look at them himself. No man travels quietly on in the road to ruin with the picture of it before his eyes. When a man fails through indolence or negligence, it is because he keeps no accounts, or has not the heart to look at them. There is little danger that a man chosen for such a situation should publish accounts that were imperfect or confused—it would be a confession of incapacity or fraud: if there were, a form might be prescribed to him, and a form exhibited by the first contractor, and approved of by the public, would be as a law to his successors. They might make it more instructive: they would not dare to make it less so.

Economy, I have said, should be the leading object; and it is principally because the contract plan is the most favourable to economy, that it is so much superior to every other plan for this kind of prison management. But turn the subject all round — view it in what lights you will, you will not find any on which the contract plan is not at least upon a par with trust-management, even in its least exceptionable form. Economy out of the question, turn to the other *ends* which a system of prison-management ought to have in view. In which of all those instances is a contracting manager more in danger of failing than an uninterested one? Turn to the two other *rules* that have been put in a line with that of *economy*, and in the infringement of which, in some way or other, every species of mismanagement in such a situation may be comprised: which of them is a contractor, with the guards upon him that we have seen, more likely to infringe, than a manager who has no pecuniary interest at stake? In every one of these points, we shall find the probity of the uninterested trustee exposed to seductions from which that of the contractor is free: that of the latter armed with securities with which that of the former, if provided, is not provided in the same degree. What I allude to is popular jealousy; but of that a little farther on. Turn to the *motives* which a man in this situation can find for paying attention to his duty. In the instance of the uninterested manager, what can they be? — love of power, love of novelty, love of reputation, public spirit, benevolence. But what is there of all this, that may not just as well have fallen to the contractor's share? Does the accession of a new motive destroy all those that act on the same side? Love of power may be a sleepy affection; regard to pecuniary interest is more or less awake in every man. Public spirit is but too apt to cool; love of novelty is sure to cool: attention to pecuniary interest grows but the warmer with age.

Among unfit things, there are degrees of unfitness. As trust-management is, in every form it can put on, ineligible in comparison of contract-management, so, among different modifications of trust-management, is board-management in comparison of management in single hands. When I speak of single-handed management as the better of the two, I mean it in this sense only, that, by proper securities, it may be made better than the other is capable of being made by any means. Pecuniary security against embezzlement — publicity in all its shapes, against speculation and negligence: in board-management, danger of dissension, want of unity of plan, slowness and unsteadiness in execution, are inbred diseases, which do not admit of cure.

When single management has given cause for complaints, it has been only on account of some accidental concomitant, or for want of those effectual checks of which it is in every instance susceptible.

A manager has in his hands large sums of public money more than are necessary for the service. Is this the fault of single management? No; but of the negligence of the law, which leaves so much public money in private hands. A manager holding public money in a quantity not more than sufficient, embezzles it. Is this the fault of single management? No; but of those who let him have it without account, or without security.

Can these guards, or any guards, ever put uninterested management even in single hands upon a par with interested? Never, till human nature is new made. They will prevent peculation; they will prevent gross negligence; they may prevent all such negligence as is susceptible of detection: will they screw up diligence and ingenuity to their highest

* Letters IX. and XII.

pitch? Never, while man is man. A man himself can never know what he could get, unless the profit is his own. What a man has got and pocketed, or thrown away, you may punish him for: can you punish him for the extra profit which, for want of a peculiar measure of industry and ingenuity, such as the genial influence of reward could alone have inspired him with, he failed of getting? *Good* and *bad* are terms of comparison. Be your management ever so thrifty, or ever so productive, you can never know which epithet it deserves, till you have seen it in interested hands. Till then, you have no standard to compare it to. Good in comparison of what it has been, it may be bad in comparison of what it might be.

The advantages of the contract mode over both the others are not yet at an end. Along with uninterested management goes a salary. This is at least a natural arrangement, and, under the prevailing habits and modes of thinking, the only probable one. This salary is so much thrown away. "And will not a contractor equally require payment?" Doubtless: but where will he look for it? To the fruits of his own industry, not of other men's. The difference in point of productiveness between management with, and management without interest, is the fund he draws upon for his salary — and there needs no other.

I said *thrown away;* but it is worse than thrown away: it is so much thrown into the treasury of corruption, otherwise called the stock of influence. Whether, in the British constitution, the quantity of that stock requires diminishing, has been matter of debate: that it is in any need of increase, seems never to have been so much as insinuated.

In this respect, if trust-management in single hands is bad, board-management is worse. It is worse in proportion to the number of the members. Though the salary, and consequently the waste, should be no greater in this case than the other, the influence, and consequently the means of corruption, is abundantly so. One man with three hundred a-year is but one placeman: a board of three, with three hundred a-year amongst them, makes three placemen — each with a train of contingent remainder-men at his heels, all equally upon their knees to influence. In political corruption as in physical, to every mass of substantial putridity you have an indefinite sphere of equally putrid vapour. "And do not contracts make influence, as well as places?" Not if made as they ought to be, and might be. The contractor's dependence is on the advantageousness of his offer; the placeman's on the interest he can make with the distributors of good things.

Salary, according to the usual meaning of the word, that is, pay given by the year, and not by the day of attendance, so far from strengthening the connexion between interest and duty, weakens it; and the larger, the more it weakens it. That which a salary really gives a man motives for doing, is the taking upon him the office: that which it does not give him any sort of motive for, is the diligent performance of its duties.

It gives him motives, if one may say so, for the non-performance of them; and those the stronger, the more there is of it. It gives him pleasurable occupations, to which those laborious ones are sacrificed: it sets him above his business: it puts him in the way of dissipation, and furnishes him with the means. Make it large enough, the first thing he does is to look out for a deputy; and then it is what the principal gives the deputy, not what you give the principal, that causes the business in any way to be done.

In the instance of the contracting manager, the greater the success of the management, the stronger the motive he has to do his utmost to increase it. In this instance, the emolument is in reality a reward: in that of the placeman, only in name. In the latter case, the service with which the emolument is connected is, not the successful performance of the business, but the mere act of undertaking it.

This is not all. Salary, in proportion to its magnitude, not only tends to make a man who happens to be fit for his business less and less fit, but it tends to give you in the first instance an unfit man, rather than a fit one. The higher it is, the nearer it brings the office within the appetite and the grasp of the hunters after sinecures — those spoilt children of fortune, the pages of the minister and of every minister, who, for having been born rich, claim to be made richer — whose merit is in their wealth, while their title is in their necessities — and whose pride is as much above business, as their abilities are below it.

If you could get a manager for nothing, though he will serve you less badly than if he had a salary, he will not serve you so well as a contractor. What he gains or saves may be an amusement, but what he loses or fails to gain will be no loss to him. From his desiring the situation without salary, what is certain is, that he loves the power: what is not certain is, that he loves the business. Should the work at any time be too heavy for him, he can shift it off upon anybody, the power remaining where it was. From his liking the business while it is a new thing, it does not follow that he will continue to like it when the novelty of it is worn away. From his retaining the situation when he has got it, it does not follow that he likes the business of it, or that he likes any business; for the giving it up would require an effort, and the retaining it requires none. The chance of

extraordinary profit (I mean with reference to trust-management, for with reference to common mercantile management it is but ordinary) is upon the same inferior footing as before; and so is the security against positive loss, whether resulting from negligence or peculation. In the nature of things is it possible that a man who has no interest in the business should be as much attached to it, as zealous to make it succeed, as one whose all depends upon it?

The unpaid, as well as uninterested manager, stands behind all others on another account. The more confidence a man is likely to meet with, the less he is likely to deserve. Jealousy is the life and soul of government. Transparency of management is certainly an immense security; but even transparency is of no avail without eyes to look at it. Other things equal, that sort of man whose conduct is likely to be the most narrowly watched, is therefore the properest man to choose. The contractor is thus circumstanced in almost every line of managment: he is so more particularly in the present. Every contractor is a child of Mammon: a contracting manager of the poor is a blood-sucker, a vampire; a contracting jailor, a contracting manager of the imprisoned and friendless poor, against whom justice has shut the door of sympathy, must be the cruellest of vampires. The unpaid, as well as uninterested manager, is, of all sorts of managers, the most opposite to him who is the object of this distinguished jealousy: he expects and receives confidence proportionable; though on several accounts not entitled, as we have seen, to so much, he enjoys more A man who, in a station so uninviting, has the generosity to serve for nothing, while others who occupy the most flattering situations are so well paid for it, will assume to himself accordingly, and make in other respects his own terms. Unless the honour of serving the public *gratis* were generally put up to auction, a plan never yet proposed, nor the more likely to be adopted for being proposed, this must always be the case. Standing upon the vantage ground of disinterestedness, he looks down accordingly upon the public, and holds with it this dialogue:—*Gentleman Manager*—" I am a gentleman: I do your business for nothing: you are obliged to me." *Public*—" So we are." *Gentleman Manager*—" Do you mind me? —I am to get nothing by this:—I despise money:—I have a right to confidence." *Public*—" So you have." *Gentleman Manager* —" Very well, then;—Leave me to myself —Never you mind me—I'll manage every thing as it should be—I don't want looking after: don't you put yourselves to the trouble." *Public*—" No more we will." What is the fruit of all this good understanding? Frequently negligence: not unfrequently peculation.* Peculation, where it happens, is not liked: but of what is lost by negligence, no

* It was but the other day that a very respectable society, instituted for the most benevolent of purposes, lost in this way more than half its funds. They were in a single hand: board management would have saved them. Is board-management therefore necessary? By no means. The man in whose hands they were lodged had nothing of his own: no pecuniary security had been required of him. Legal powers were wanting: no authority to examine him—no court to summon him to. He would give in no accounts: perhaps he had kept none. What he had, he gave: fine sentiments and fine periods in plenty. He was a gentleman: he had given his time for nothing: the same benevolence that had prompted others to give their money, had prompted him to receive it. Was such a man to be questioned? Questions import suspicion. Suspicion, by a man of fine feelings, is only to be answered by defiance.

Not long ago, another man ran away, having been detected in a course of fraud, by which he had gained to the amount of some thousand pounds at the expense of a parish. How came this? He, too, was a gentleman: serving the public without pay, he was not to be suspected. He gave in accounts from time to time, such as they were; but, not being published and distributed, they were accessible only to a few, who had too much good manners and too much faith to look at them.

Neither is board-management, even where carried on without pay, by any means exempt from peculation. I have instances in my eye; but what is not public, cannot be mentioned publicly. Nor can instances be wanting to any one who has read the instructive but melancholy view given by Howard in his book on Lazarettos, of the state of the charities in Ireland. In England, parochial peculation is become proverbial.

One of the Scipios, being in a pecuniary office, was called upon for his accounts:—" Gentlemen," said he, " this day so many months, I got a prodigious victory." " *Scipio for ever!*" was the cry, " *and no accounts!*" According to the mob of Scipio's days, and according to the mob of historians of all days, the author of the motion was a calumniator: according to others, Scipio had a good countenance, and knew the people he had to deal with. In Scipio's case, were I guilty, and bold enough, I would do exactly as Scipio did. Were I innocent, I should regard the obligation of publishing accounts, not as a burthen, but as a privilege.

A prevailing but erroneous propensity, derived from the times when the means of publicity were not so easy as at present, is to cramp power and leave the exercise of it in the dark. Every thing is by this means against the upright manager—every thing in favour of the corrupt and intriguing one. A board is instituted, consisting of members with powers apparently equal, but of whom all but one are reduced to cyphers, by support secretly whispered into the ear of one, and withholden from the rest. This is another instance that may be added to the ways in which the mischief of division is palliated, and a government, apparently of many, reduced to a government by one. Where, in consideration of character and situation, anything more than ordinary in point of confidence is thought fit to be reposed, removal of clogs and enlargement of

account is taken. So good are the public, and in theory so fond of virtue, they had rather see five hundred pounds wasted at their expense, than five shillings gained.

Between the public and the candidate for a management-contract, there passes, or at least might be made to pass, a very different conversation:—

Public—"You are a Jew."

Contractor—"I confess it."

Public—"You require watching."

Contractor—"Watch me."

Public—"We must have all fair and above board. You must do nothing that we don't see."

Contractor—"You shall see every thing: you shall have it in the newspapers."

Public—"Contractors are thieves.—Sir, you must be examined."

Contractor—"Examine me as often as is agreeable to you, gentlemen—any of you, or all of you. I'll go before any court you please. Thieves stand upon the law, and refuse answering when it would show you what they are. I refuse nothing. I stand upon nothing, gentlemen, but my own honesty, and your favour. If you catch me doing the least thing whatever that should not be, let my Lord Judge say go, and out I go that instant."

Choosing board-management, the penitentiary act, to do it justice, was as moderate under the articles of salary and influence as it well could be. Seven persons only can be found with useless salaries:* the two nominal governors, the three who compose the governing committee, their clerk, and the inspector, in as far as his office regards the penitentiary-house. The governor's and committee clerk's salary was to be settled by the committee: the committee, though appointed according to custom by the crown, were to have their salaries settled by another authority, the justices of the peace in sessions. The inspector, an officer to be appointed by the crown, is the only one of them whose salary is fixed by the act—£200 a-year, a salary moderate enough, if it had been of any use. Even the board, thus confined to the smallest number possible, were to have no pay but in proportion to attendance—an excellent regulation, which, while it insures assiduity in this bye-corner of the political edifice, is a satire on the rest.†

powers is the proper shape for it to show itself in. As to secresy, there are few affairs or departments indeed, in which, except it be just for the moment, it can be either necessary or of use: none at all in which the curtain might not and ought not at some period or other to be drawn aside. And it is one of the advantages attending the increased power of the public eye, that the amplitude of discretion, so necessary in most instances to good management, may be given on such terms with more security than heretofore.

* Seven, did I say? I was too hasty—I should have said nine; adding to the seven, one of the two surgeons, and one of the two chaplains.—Two sexes, two houses: two houses, two chaplains, and two surgeons. This is trust-logic, fine gentleman's logic, placeman's logic: contract logic is of humbler mould.

1. As to *Surgeons*.—Suppose one sick out of ten: 90 sick at a time out of the 900. The supposition is extravagantly large and beyond experience; but it will serve for a supposition. For tending these 90, there is the medical assistant's whole time: a surgeon will attend a greater number than this at an hospital, in addition to his private practice. For the mechanical part of the business, he might likewise find assistance enough if necessary amongst the most intelligent and orderly of the prisoners. This is actually practised on board the hulks. One surgeon, then, to make trial with? *No.* Well, but if upon trial of two, one is found superfluous? *No again*: the act is inexorable. Though the committee and everybody else should find one of the two useless, two there are to be, in spite of all the world. See § 19. The paragraph puts the case, and decides upon it.

2. As to *Chaplains*.—Divine service, instead of twice in each of two chapels, four times a-day, suppose, in one: how many curates are glad to do this, besides marriages, baptisms and burials? *Oh, but Sunday is but one day. You forgot the other six.* No: not I indeed. I know who do; but I am not one of those. My chaplain would not find less to do on the sixth than on the seventh. But this is heresy: and what right have I to attribute my heresies to the authors of the penitentiary act.

But why service at different times, even upon the common plans? In the Magdalen chapel, is there not a numerous company of females concealed from every eye?

† A word or two may not be amiss by way of recapitulation. Interested management, when accompanied by the safeguards of which it is susceptible, has the advantage of uninterested management, however modified: 1. In carrying the probability of the best economy to the highest pitch; 2. In exciting scrutiny by the jealousy it inspires. In these particulars, it has the advantage of uninterested, even where the latter is in single hands, and those unpaid.

Where trust-management cannot be had without salary, contract-management may be expected to have the farther advantage of saving the amount of the salary.

The inconveniences resulting from salary are: 1. Waste of money; 2. Increase of the influence of the crown; 3. Tendency which the salary has to give birth to negligence, and that partly by setting a man above his business, partly by throwing him in the way of occupations that draw him off from his business; 4. Tendency which it has to throw the place into the hands of a person originally unfit for it.

The farther inconveniences resulting from board-management, in contradistinction to trust-management in single hands, are: 1. Multiplied waste of money; 2. Multiplied increase of influence; 3, 4, 5, and 6. Detriment to economy, by delay, by want of unity of plan, by fluctuation of measures, and by disagreement.

Payment according to attendance is a good security, as far as it goes, against non-attendance: (a deposit besides, to be returned upon attend-

The contract plan, I have said, saves a world of regulations. It does most certainly. What object should they have? *Prevention of cruelty?* Details will never do it. If the disposition exist, tie it down in one shape, it breaks out in another. Checks for this purpose must be of a broader nature — broad enough to comprehend the mischief in all its forms: life-insurance, transparent management, summary justice.* — *Prevention of undue lenity and indulgence?* A very little in this way will suffice. Self-interest is the great check here: it may be trusted without much danger. Few indulgences but either cost money, or diminish labour. The only danger is, lest some which are improper on other accounts should be granted for the sake of money; such as spirituous liquors,† gaming, and a few others. These, indeed, may be refused by law: but these come within a narrow compass.—*Economy?* Is that the object? Under the contract plan, the idea would be too ridiculous. Is it in spite of his teeth, that a man is to be made to pursue the management that would answer best to him?

Under the plan of trust-management, such care may not be altogether superfluous. Two qualities are requisite — intelligence and industry. On neither head can the legislator be absolutely at his ease. Of himself he is sure: he cannot be equally sure of his unknown deputy. He himself has the business at heart and in his thoughts: whether the future manager will either understand or care anything about the matter, is as it may happen. The principal has to teach him his duty, and when taught, to keep him to it. Is the contractor to be treated in the same manner? Yes, if it requires the same pains to make a man pursue his interest, as to keep him to his duty.

Mistakes, if made by legislation, cannot they be corrected by legislation? O yes, that they may; and so may mistakes in generalship. In what time? With good fortune, in a twelvemonth: with ordinary fortune, in two or three years, or in another parliament. When the army has been cut to pieces for having been enacted to march the wrong way, get an act of parliament, and you may order a retreat: when the capital has been sunk in a bad trade, get an act of parliament, and you may try another.‡

Spite of all this, economy was to be beat into men's heads by a legislative hammer. Rules of economy for almost every branch of the concern — building, employment, diet, bedding, furniture. And what comes of it all? — We shall see. It will be worth seeing. Who are they, whose labours, thus employed, are worse than thrown away?—are they without name or reputation? They are among the highest on the list of public men.

Notwithstanding all this pains taken to teach, as well as to enforce good economy, should bad economy prevail after all, observe the remedy. By § 62, provision is made for "checking or redressing waste, extravagant expense, and mismanagement." Justices in sessions, upon inspection of the accounts, may report it to the King's Bench, "who shall take order therein immediately:" but the waste must be "notorious," and the mismanagement "gross." — *Immediately* after what? After hearing the report, that is, half a year, perhaps, after the "observation" of the mischief, and a quarter of a year more, perhaps, after the commission of it — the delinquency going on all the while. Whoever will take the trouble to compare the times of quarter-sessions and law-terms will find that this remedy, such as it is, is in season only in the spring and winter months, and then is not a very speedy one. Against "waste," at least, and "extravagant expense," and every mismanagement by which the contractor would be a loser, the remedy afforded by contract-management is rather more simple, and is in season all the year round.

Oh, but this contract plan — it's like farming the poor: and what a cruel inhuman practice that is! — Be it so in that instance: the present is a very different one.

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ance, would be still stronger:) but still it can never put board-management upon a par with single management, guarded as above, much less upon a par with contract-management. Where the mind is absent or indifferent, the presence of the body is but of little use.

To what degree of perfection might not government be carried, were it possible to give equal strength to the connexion between interest and duty in every other line of service! — were it possible that, in the administration of justice, for instance, the judge, without any formality of law, should be a gainer of course by every right judgment he gave, and a proportionable loser by every erroneous one! — that, in the spiritual department, the pastor should not only gain, but be seen to gain, a step himself, by every successful lift he gave to any of his flock in the road to heaven, and to suffer for every soul that lost footing by his negligence!

* What details are there on this head in the law of master and apprentice?

† A prohibition on this head, inserted into the penitentiary act, has been attended with the happiest consequences. To this cause principally, if not solely, may be attributed the general good health of the convicts on board the hulks, as noted in Part I. Section 24, and of those at Wymondham. The success of this single clause has made ample payment to the authors of the penitentiary act for all their trouble, and to the public ample atonement for their errors.

‡ Looking at the governor, and his governors the committee, I cannot help thinking of a general under field-deputies. One set is, I believe, the most ever general was saddled with, and they have commonly given him sufficient trouble. The general of the penitentiary act has three sets of them, one above another; standing committee, justices in sessions, and judges of assize.

1. The objects or *ends* in view, so far from being the same, are opposite. There, comfort: here, punishment; moderate and regulated punishment, indeed, but, however, punishment. In the one case, whatever hardship is sustained is so much misery in waste. in the other case, howsoever it be to be regretted, it is not altogether lost; it contributes, at any rate, to swell the account of terror, which is the great end in view.

2. Another difference is in the *checks*. Here, an unexampled degree of publicity: there, next to none. There, though no hardships are intended, the severest may take place: here, whatever are intended to be felt are intended to be seen; and nothing in that way that is not intended, can stand any chance of remaining concealed. Who but parishioners, and how few even of them, ever think of looking into a poor-house? But in what corner of a Panopticon penitentiary-house could either avarice or negligence hope to find a lurking-place? *Time is fatal to curiosity.* True, in an individual, but not in a succession of individuals. The great dependence of the penitentiary act is on a single inspector — *one* inspector for the *thousand* houses its town was to contain, and who was also to serve for the hulks, "and all the other places of criminal confinement in London and Middlesex" besides:* and so well satisfied is it with this security, as to allot £200 a-year to pay for it. Let money or friendship (no very extravagant supposition) make a connexion between this inspector and the managers he is to inspect, what is the security worth then? Here, to *one* room, you have inspectors by *thousands*. Is it possible that a national penitentiary-house of this kind should be more at a loss for visitors than the *lions*, the *wax-work*, or the *tombs?* Of the 25,000 individuals born annually in London, I want but one out of a hundred, and him but once in his life, without reckoning country visitors. Call it a spectacle for youth, and for youth only: youth, however, do not go to spectacles alone.

3. A third difference respects the *quality* of the managers. For the poor-house of a single parish, what can you expect better than some uneducated rustic or petty tradesman? the tendency of whose former calling is more likely to have been of a nature to smother than to cherish whatever seeds of humanity may have been sown by nature. For a station of so conspicuous and public a kind as that of the governor of a national penitentiary-house, even upon the footing of a contract, men of some sort of liberality of education can scarce be wanting — men in whose bosoms those precious seeds have not been without culture. Such men were certainly not wanting for the originally-designed penitentiary-house: upon what principle should they ever be despaired of, for what I hope I may style the improved one? In a concern of such a magnitude, the profit, if it be any thing, can hardly be inconsiderable: the number and quality of the candidates may be expected to be proportionable. A station that is at any rate conspicuous, and that may be lucrative — a station in which much good as well as much evil may be done — in which no inconsiderable merit as well as demerit may be displayed in a line of public service, is in little danger of going a-begging. And should the establishment be fortunate in its first choice, the reputation of the servant will help to raise the reputation of the service.

Where, then, is the resemblance? Not that I mean to pass any censure on contract-management in the other instance. It may be eligible without any modifications: it may be eligible only under certain modifications: it may be radically and unalterably ineligible. All this I pass over, as being foreign to the purpose.

Whoever else may be shocked at the idea of farming out prisoners, the authors of the penitentiary act are not of the number. They approve it, and adopt it: they confirm it on board the hulks. What is the business done, or supposed to be done, on board those vessels? Scraping gravel from the bottom of a river—a business in which there was nothing that could be gained or lost to anybody: nothing to buy but necessaries, nothing to make, nothing to sell—no capital to be disposed of. What was the business intended to have been carried on in the penitentiary-houses? A vast and complicated mercantile concern—not one manufacture, but a congeries of manufactures. They saw before them two establishments, a mercantile and an unmercantile one: The mercantile, affording peculiar aliment and temptation to peculation; — shrinking, like every other mercantile concern, from the touch of extraneous regulation; — rendering official and mercenary inspection the less necessary, by the invitation it holds out to free and gratuitous inspectors; — possessing, in that innate facility of inspection, a peculiar safeguard against any abuses that could result from inhumanity or negligence. The unmercantile concern, affording, in comparison, scarce any aliment or incitement to peculation; — containing nothing of mercantile project that could be hurt by regulation; — at the same time, by the very nature of the place and of the business, excluding all promiscuous affluence, all facility, and almost all possibility of spontaneous visitation; — possessing, in consequence, no natural safeguard against negligence or inhumanity, but rather offering to those, and all other abuses, a perpetual screen: — in a word, the mercantile

* § 63.

concern, by every distinguishing circumstance belonging to it, repelling regulation and trust-management: the unmercantile one, calling for those checks, and admitting of them with as little inconvenience as any other that could be imagined. Such are the two establishments:—what were the modes of management respectively allotted to them? To the mercantile, trust-management, board-management: to the other, contract-management. The mercantile, loaded and fettered with incessant regulation, permanent as well as occasional, known and unknown, present and future, is delivered over to a body of managers who have no interest in the success—a prey to delays, to want of unity of plan, to fluctuation, to dissension. The unmercantile and uninspectable one, left altogether without regulation:* the prisoners abandoned to the uncontrouled and uncontroulable discretion of a single despot, taken from the white-negro trade.† Where there is management that regulation might spoil, they regulate without mercy: where there is nothing to spoil, they abstain from regulating, as if for fear of spoiling it.

SECTION III.

OF SEPARATION AS BETWEEN THE SEXES.

In all plans of penitentiary discipline, the distribution of the prisoners into classes is a point that has been more or less attended to. In this classification, the object regarded as most important has been the separation of the sexes. In the present plan, provision for that purpose has not been neglected. On this head, as on most others, the provision made must be governed in some degree by the peculiar structure of the building. The means employed in buildings of the ordinary form have little or no application here.

Two modes of effecting the separation offer themselves at first view. The one is, to provide for female convicts a building and an establishment entirely separate: the other is, to allot to this purpose, if the same building is employed for both sexes, at least a separate ward. The unfrugality is an objection that applies with more or less force to both these expedients.

It applies with particular force to the case of a building and establishment altogether separate. The numbers to be provided for being variable, a fixed provision must ever be attended with a loss. The fluctuation to which the total number of prisoners, male and female taken together, is liable, is a distinct object, for which, upon this plan, provision has been already made. But the proportion between males and females is equally liable to vary and to fluctuate. Provide two establishments, one for males and a separate one for females: the one may be comparatively empty, while the other overflows; at the same time that no relief can be afforded by the superabundance of room in the one, to the deficiency of it in the other.‡

The same inconvenience will still obtain in a greater or less degree, in the case of separate wards. Whatsoever be the proportion fixed, cells will be vacant in one part, while they are wanting in the other.

The best arrangement, were the numbers

* There is indeed a clause, but a very vague one (§ 60,) for subjecting the superintendents of the hulks to the "direction given" respecting the "governors of the penitentiary-houses;" but in terms so general and pregnant with ambiguity, that little, if anything, can be collected from it. One thing only is certain, viz. that it leaves no room for the introduction of any regulations besides those given in the act itself; for, by § 16, such future regulations can originate only with the committee of *three*, whose authority is confined to penitentiary-houses.

† This refers to the class merely, let it be observed, and not to the individual. Unhappily where conduct is buried in darkness, it is by the class only that the individual can be judged. The inspector mentioned in the act has never been appointed. No powers whatever are given him, unless the right of entry given by implication is to be called a power. The same right is given to justices of the peace within their territory (§ 41.) He was to visit and report four times a-year. He was to have enough to do besides; for he had the same powers with regard not only to the penitentiary-houses, but all the other "places of criminal confinement in London and Middlesex." (§ 63.)

‡ The colonization plan, if it is to go on, and if it is to be consistently pursued, will add a factitious cause of variation to the above-mentioned natural ones. The average number of female convicts is in a large proportion inferior to that of the males. According to the penitentiary act, it should be at the most only as one to six, since, in the penitentiary-house, among 900 prisoners there were to have been only 300 females to 600 males, and there have always been more than twice 900 males on board the hulks. Were the whole number of females without exception sent to colonize, the number would therefore still remain far short of being adequate to the purpose. As far as concerned the female sex, the only use of a penitentiary panopticon would be to keep them during the interval between one colonizing expedition and another. At one time, then, it may contain hundreds; at another time, none, unless it be the case of married women whose husbands were not comprised under a similar sentence. I know of no case that would afford an exception:—not that of women past child-bearing; not that of those in whom that faculty had suffered a premature extinction; especially as in the latter case the matter of fact does not admit of being ascertained. Even were population out of the question, women would be of indispensable necessity for society and service. In such a situation, everything in the shape of a woman is inestimable. Here a crowd of reflections present themselves, which however must be dismissed, as not being to the present purpose.

such as to need it, and the proportions suitable, might be to have three Penitentiary Panopticons; one always filled with males, another always filled with females, and a third to receive, in such proportions as accident furnished, the overflowings of the other two. The difficulty here in question having no place in either of the unmixed establishments, I proceed here on the supposition of a mixed one.

Conceive such a Panopticon divided into two sides: that on the right of the entrance I call the *male* side; that on the left the *female*. For the male side, I provide as many male inspectors as shall be found requisite; adding, at least, one female, whom I style the matron, for the female side. To each sex I allot a separate staircase, running from top to bottom. No female is ever to set foot on any part of the male staircase: no male on any part of the female. Neither is any male, in passing from his cell to the male staircase, to pass by any of the women's cells: he is to come round to the male staircase, however distant: and so, *vice versa*, in regard to females.

Supposing females enough to occupy the whole female side of two stories of cells, thus far there is no difficulty. I place them in the lower pair of cells, subjected to inspection from the main or lower story of the inspection-tower, viz. that which is underneath the chapel, and in which the annular inspector's gallery incloses a circular inspector's lodge. The left-hand semicircle of the whole circuit, lodge, and inclosing gallery together, I allot to the matron, with her female assistant or assistants, if such should be found necessary. The right-hand I appropriate to the male inspector with his subordinates. In the lodge, a moveable screen marks their respective territories. In the encircling gallery, a similar screen or a curtain answers the same purpose.*

As far as *sight* is concerned, two pieces of canvas, hung parallel to each other at about 18 inches distance (the thickness of the partition-walls of the cells) across the intermediate area and the cell-gallery, will serve effectually enough to cut off from the prisoners of each sex all view of those of the other, even where the cells are contiguous. In regard to *conversation*, the males on the one side the separation-wall, and the females on the other, must respectively be prohibited from approaching within a certain distance of the end of that wall; that is, from approaching within that distance of their respective grates: and to enforce the observance of this prohibition, as well as to save the parties from unintentional transgression, a moveable interior grate, or lattice-work, very slight and very open, or netting, may be placed within each of the two cells at the requisite distance from the main grate.†

As far as *hearing* is concerned, the separation, it is evident, would be effected in a manner still more simple and effectual, if between the males on the one side and the females on the other, a whole cell could be left vacant. If, then, the numbers are such as to leave any such vacant cells, the vacancy will of course be left in the spot where it answers the purpose of separation. Should the number of cells occupied by females be even, but less than the number contained in the female side of two stories of cells, the mode of effecting the separation is almost equally simple. The set of moveable partitions must be shifted accordingly, viz. the curtains crossing respectively the inspector's gallery, the intermediate area at that height, and the cell-gallery, and the screen which separates the matron's side from the male side of the lodge.

If the number of female cells, though still even, should be greater than as above, two modes of making provision for it present themselves. One is, to enlarge the matron's side of that floor at the expense of the male inspector's, as the latter was, on the former supposition, enlarged at the expense of the former: the other is, to leave the division even, and take what farther cells are requisite for females from a higher pair of cells; parting off the corresponding part of the inspection-gallery, the annular-well, and the cell-galleries, as before.

Is the number of cells an uneven one? The mode of effecting the separation is again somewhat different, though still scarcely less obvious than before. In this case, the female part in one of the stories of a pair of stories of cells would extend further than in the other: hang the separation-curtain in the annular area as you please, a female cell must be exposed to the view of a male inspector, or a male cell to that of a female one. To obviate this irregularity, one of the cells must be left vacant. If the number on the establishment should be short of the full complement, it would be only leaving the vacancy here, instead of elsewhere: if it should have the full complement, or more, the inhabitants of the vacant cell must be turned over to other cells, which will thus be in the case already explained of having a *super-complement*.

* It is scarce necessary to observe, that screens and curtains, and other such moveable partitions intended as obstacles to sight, must be double, or may be single, according to circumstances. Where the eye meant to be eluded can gain a near approach, they must be double; otherwise a slit or a pin-hole would be sufficient to frustrate the design: when such approach is not to be apprehended, a single screen answers the purpose.

† It must have a door of the same materials, with a lock to it, corresponding to the door of the exterior grate.

On the sunk story, from which the exit is into the yards, and in particular at the exit, the separation is still more perfectly effected, and more easily managed. A single piece of canvas, let fall from the inspector's bridge across the intermediate area, does the business at once.

Here may perhaps occur, as a disadvantage, what, on a general survey, appeared in the light of an advantage — that each inspector, over and above the perfect view he has of his own pair of cells, has a partial view of all the others in the same pile. Hence it will be observed, that notwithstanding the precautions above detailed, a male inspector will have some view of a female cell; and *vice versa*, though it be less material, a female inspector will have a similar view of a male cell. The answer is, that the boundary line, viz. that at which a prisoner begins to be visible to an inspector in the gallery above or below the one belonging to the cell in question, will appear in practice beyond danger of mistake. Within this line, which may be sufficiently defined by a very simple mark, such as a rope hung across, the female prisoners may be warned and enjoined to confine themselves at stated portions of the twenty-four hours; for in regard to such an imperfect and distant view, decency is the only consideration that makes it very material to place the female part of the prisoners so completely out of sight of the male part of the inspectors: and it is only to certain times and certain occasions that the laws of that virtue will in such a case apply. The imperfect view from a superior or inferior story of the inspection-part is in few instances so extensive but that a female prisoner, in dressing herself, for example, or undressing herself, may be perfectly out of the reach of a male inspector's eye; and in those few instances, provision may be made, either by leaving of vacancies, or by interposition of screens, in manner already mentioned. All this while, what must not be forgotten is, that a female prisoner cannot be exposed in a manner ever so imperfect to the eye of a male inspector, without being exposed in a much greater degree to the observation of one of her own sex; a circumstance which affords sufficient security against any voluntary trespasses against decency that might be committed by a female prisoner, through impudence, or in the design of making an improper impression upon the sensibility of an inspector of the other sex.

The same consideration will serve to obviate an objection which the slightness of the partitions that separate the male from the female side of the inspection-tower might suggest. The great object in regard to the separation of the sexes is that between prisoners and prisoners; and that object is completely provided for. As to what concerns prisoners on the one hand and inspectors on the other, it is only at certain times that the female prisoners need, or even ought, to be out of all view of male inspectors; at other times, the utmost that can be requisite is, that they should not be exposed to the view of the inspectors of the opposite sex, without being at the same time exposed, in at least equal degree, to those of their own. Neither of these objects is more than what an ordinary attention to discipline is sufficient to insure.

A due attention to the same considerations of time and circumstance will be sufficient to insure the same regard to decency in that part of the discipline which concerns the inspection of the external yards. While the female convicts are taking their air and exercise at one of the walking-wheels, an inspector of the opposite sex, especially at the distance at which he is placed in the look-out, is as unexceptionable as one of their own. When bathing is to be performed by females, it is in a yard into which no prisoner of the other sex need ever set foot, and exposed to no other inspection than that of a female inspector occupying her quarter in the look-out; or, if necessary, the times of bathing might be different for the different sexes, and each inspector might in his turn give place to the other, quitting the look-out altogether.

The good Howard expresses himself much distressed to know what to do about making a choice between the sexes for the management of a penitentiary-house for females.* Female rulers might want firmness: in male ones, probity and impartiality might be warped by the attraction of female eyes. The panopticon principle dispels this, as well as so many other difficulties. Among the prisoners, a coalition between the sexes would be an abuse; among the inspectors, it is a remedy against abuse. The weakness of the matron would find a support in the masculine firmness of the governor and his subordinates: a weakness of a different kind, on the male side of the establishment, would find its proper check and corrective in the vigilance of matronly severity. As to the matron and her subordinates of her own sex, it is not surely too much to assume, that for these stations individuals will be chosen, to whom age as well as character have given an authority not to be shaken by any such improper influence. The mixed inspection, let it be observed, I suppose to be simultaneous: if alternate only, the check would have little force. The male ruler would have *carte blanche* while out of the eye of his female colleague.

Must the iron law of divorce maintain throughout the whole of so long a term an unremitted sway? Can the gentle bands of wedlock be in no instance admitted to assuage

* On Lazarettos, p. 225.

the gripe of imprisonment and servitude? Might not the faculty of exchanging the first-allotted companion, for another far otherwise qualified for alleviating the rigours of seclusion, be conceded, without violation of the terms, or departure from the spirit of the sentence? Might not the prospect of such indulgence be an incentive to good behaviour, superadded to all that punishment can give? These are questions to which a humane manager would surely be glad to find (and why need he despair of finding?) a fit answer on the lenient side.

SECTION IV.

OF SEPARATION INTO COMPANIES AND CLASSES.

A MODE of separation according to a plan of division into classes, being exhibited in Plate III., something will be expected to be said in explanation of it.

As to this part, the draught had two objects: one was, to show in what manner the inspection principle might be applied in undiminished perfection to an uncovered area, and that without prejudice to any number of divisions, which, in what view soever, it might be found convenient to make in it: the other was, to show in what manner the mischiefs so much lamented by Howard and other prison reformers, as resulting from promiscuous association, might be diminished by a division of the prisoners into classes, accompanied by a local and physical separation correspondent to that ideal one.

Dissatisfied with the division into classes, though carried to a degree of improvement hitherto without example, I turned my thoughts to the preservation of the degree of seclusion observed in the distribution of the prisoners among the cells, viz. a division into small and regulated companies: and it was in the course of this inquiry that I hit upon the plan of airing, of which the *marching parade* is the scene.*

The mischiefs in question being, by means of this plan of airing, obviated, if I am not mistaken, as far as the nature of things will admit, all other plans which fall short of obviating those mischiefs in equal degree, and accordingly the above-mentioned plan of division into classes, are consequently superseded: in this one, therefore, of the two points of view above mentioned, the divisions exemplified in the draught are of no use.

A few additional observations, for the purpose of placing in the clearest light the relative eligibility of the several possible modes of disposing of prisoners in respect of society among themselves, may not be altogether ill bestowed.

The principal and most simple modifications of which the management in relation to this head is susceptible, stand expressed as follows:—

1. Promiscuous association.
2. Absolute solitude.
3. Division into limited companies.
4. Separation corresponding to a division into classes.
5. Alternation of solitude with promiscuous association.
6. Alternation of solitude with division into limited companies.
7. Alternation of solitude with separation according to classes.

Of these courses, the first stands reprobated on all hands. The second I have rejected for the reasons given at large in Part I. Section 6. The third is that which I have preferred to the second, for the reasons given in the same section. The fourth is that which occurred to me at first as preferable to the first and second, but stands superseded by the third. The fifth is that established by the penitentiary act, and the plans which follow it, partly as it should seem for want of viewing the evil in its full magnitude, partly for want of knowing how to obviate it. The utmost improvement to which that system would naturally conduct is the exchange of this fifth mode for the seventh. The sixth is mentioned here only to complete the catalogue, its inutility being indicated by the same considerations which show the sufficiency of the third.

Companies and classes — where is the distinction? — Here: in companies, the numbers are determinate; in classes, indeterminate. In the plan represented by the draught, the classes, though more in number than have ever yet been discriminated, would still, in an establishment of any magnitude, be few: but though they were as numerous as the cells by the number of which that of the proposed companies is determined, the division according to classes would never coincide with or answer the purpose of the division into companies. Why? Because the number of individuals in each class being essentially indeterminate, some classes might be empty while others overflowed; and in those that overflowed, the number would consequently exceed the measure pitched upon as the greatest that could be admitted without departing from the ends in view.

Of the separation according to classes, as contradistinguished from the separation into companies secured as by the airing plan, the chief inconveniences are the two following: it leaves the convicts still, as we have seen, in *crowds;* and if pushed to any length, and carried into effect by separation-walls, is a

* See Part I., p. 104.

proportionably attended with a great addition to the expense.*

That it leaves the prisoners in crowds is evident; for separation according to classes implies association as between individuals of the same class: of whom, though the separation resulting from the classification were to be carried ever so far, the numbers would still, as we have seen, be indeterminate.

Crowds, among men whose characters have undergone any sort of stain, are unfavourable to good morals. This property belongs to them independently of any mischievous communications that may result from the qualities of individuals. They exclude reflection, and they fortify men against shame. Reflection they exclude, by the possession they take of the attention, by the strength as well as variety of the impressions they excite, by the agitation which is the accompaniment of the incessant change. Their effect in hardening men against shame is not less conspicuous. Shame is the fear of the disapprobation of those with whom we live. But how should disapprobation of criminality display itself among a throng of criminals? Who is forward to condemn himself?—who is there that would not seek to make friends rather than enemies of those with whom he is obliged to live? The only public men care about is that in which they live. Men thus sequestered form a public of their own: their language and their manners assimilate: a *lex loci* is formed by tacit consent, which has the most abandoned for its authors; for in such a society, the most abandoned are the most assuming, and in every society the most assuming set the lead. The public thus composed sits in judgment over the public without doors, and repeals its laws. The more numerous this local public, the louder its clamour, and the greater the facility it finds of drowning whatever memory may be left of the voice of that public which is absent and out of view.

In the publications of Howard and other prison-reformers, two sorts of associations I observed, affording so many standing topics of regret: mixture of debtors with criminals; and mixture of the as yet unhardened with the most hardened and corrupted among criminals. Other associations might also here and there be noticed in the same view: such as that between minor delinquents and such classes of criminals whose offences were of the deepest dye; that between convicted and unconvicted criminals; and that between criminals under sentence of death, and others whose lot was less deplorable. But it was in the two instances first mentioned that the impropriety seemed to present itself in the most glaring colours.

In a penitentiary-house, one only of all these mixtures can come in question; viz. that between the hardened with the unhardened, the raw with the old offender.

Under the penitentiary act, and the plans of management that have been grounded on it, the condition of the prisoners alternates between the two opposite extremes: a state of absolute solitude during one part of the twenty-four hours; a state of promiscuous association in *crowds* during the remainder. This plan, it has been shown, unites the ill effects of solitude and association, without producing the good effects obtainable from the former. To vacant minds like these, a state of solitude is a state of melancholy and discomfort; which discomfort, by the perpetual recurrence of promiscuous association, is in the way of reformation useless. It is the history of Penelope's web reversed: the work of the night is unravelled by the day.†

* What startled me, and showed me the necessity of probing the subject to the bottom, was the being told by an architect, that the walls alone as expressed in Plate III. might come to two or three thousand pounds. It was high time then to inquire what the advantages were that must be so dearly paid for.

† Sensible of the inconvenience, the contrivers of the system have done what occurred to them in the view of obviating it. No two or more prisoners are to work together without a room on purpose, and one or more inspectors to attend them. This at working-times; while at the times of "meals," and airings, and "divine service," the plan of seclusion is given up as unattainable (§ 33.) What can be said of this? Immense means provided, and the end sacrificed, all in the same breath. Enormous expense, and the whole of it thrown away. There must be as many lodging-rooms as prisoners; there may be as many working rooms; and there must be as many inspectors as working-rooms. So far the act is explicit. Now for inference.—Everything to countenance the multiplication of working-rooms in this view; nothing at all to limit it. while in the same section such care is taken to set limits to the magnitude of the lodging-rooms. It is said, that where their employments will admit, they are at working times to be kept separate: is it *not* said that they shall or may work in such case in their lodging-rooms? Lodging-rooms are mentioned all along as distinct from working-rooms; and where the employment may require two persons to work together, the "room is to be of suitable dimensions." What is the inference? that it must be distinct from the lodging-rooms, and ought to be of double their size. The declared wish is, that "during the hours of labour, they may be kept separate and apart," as much as "the nature of the employments will permit," and yet, wherever the nature of the employment requires two persons to work together, those two persons are to have a room of suitable dimensions (as well as at least one inspector) to themselves. What is the final inference? that to the 900 lodging-rooms, there ought to be 450 working-rooms, of which no one ought to be less than twice as large as a lodging-room, and of which (to provide for employments that may require an unlimited number to work in the same room), any number may be ever so much larger. Had the authors meant a job (than

The distinctions observed in the formation of the classes will not be altogether lost: they will serve as guides in the formation of the companies. For this purpose, two rules present themselves:—1. *Put not in the same company, corrupt and uncorrupted; 2. The more corrupt the individuals, the less numerous make the company.* The choice as to numbers will be in general between *four, three,* and *two:* these considerations may serve to determine it.

As to the principles which determined the characters of the several classes, I took them from the source that all principles are naturally taken from — common opinion and the authority of others. This in the first instance: but for a definitive choice, I have done by them as I do by all principles, as far as time and faculties permit—I have subjected them to the test of utility. The bulk of them have stood this test; others have given way. The distinction between old offenders and raw offenders amongst males, and that between the dissolute and the decent among females, are in the former case: that between the daring and the quiet among males is in the latter.

As to the two distinctions adopted, I shall leave them on the same basis of common opinion on which I found them.

The other being rejected, something in the way of reason may be expected to account for the rejection. This reason will not be long to seek. *Quiet* or *daring* is a distinction that respects safe custody and obedience. But in a prison thus guarded, and under a government thus armed, the importance of this distinction vanishes altogether. From four — no, nor from four hundred, were they all loose together, and all Herculeses, could such an establishment have anything to fear: entrenched behind the surrounding wall — armed and invisible against the defenceless and exposed, a single female might bid defiance to the whole throng. The least number of rulers that could possibly be made to suffice for inspection and instruction, would be amply sufficient for mastery. As to obedience, it follows in the most perfect degree from the inability to hurt, the exposure to chastisement, and the absolute dependence in respect of the means of sustenance. In a situation like this, the distinction between the quiet and the daring is therefore obliterated, the most transcendent audacity being cut down to the scantling of quietness.

What misled me was the apprehension manifested in the common plans with regard to nocturnal escapes, and the anxiety not to suffer even two to be together during the night, notwithstanding the almost promiscuous association admitted of in the day. If, then, escape and rebellion, said I, are so much to be apprehended, the more daring the character of those who are left together, the greater the cause for apprehension; and if the quiet are left with the daring, the daring may corrupt them, and make them like themselves. True; but a number of men in whom the obnoxious quality is already in full vigour will be still more formidable than an equal number in a part of whom only it hath as yet taken place. Whatever, then, be the reason for separating the quiet from the daring, the reason is still stronger for separating the daring from each other. But in a place like this, audacity, be there more or less of it, must in any case be equally without effect. The distinction, therefore, is in every point of view of no use.

How different the case in the common plans of penitentiary management! Each cell is in its interior out of view of everything. Even supposing every prisoner separate, what turnkey or taskmaster could be sure of being an overmatch for each of them, and not only an overmatch at the long run, but secure against assault in the first instance? Suppose the prisoners in pairs, what two, or even what three, of their rulers, could look upon themselves as out of the reach of danger? Any man who has no regard for his own life is master of another's. In this state of desperation, which unhappily is not without example, a few prisoners might be enough to clear a common prison of its rulers.

Housebreakers seemed to be the sort of criminals from whom, on every score, the worst was to be apprehended. They would naturally be among the most daring; they would be amongst the most skilful and experienced in mischief of all kinds, and in contrivances for escape. True; and the more formidable when single, the more dangerous, were there any danger in the case, if left in the company of each other. But what becomes of danger, from the most audacious and most skilful, even of housebreakers, where there is nothing to favour escape, and every thing to render it impossible?

Having brought the plan of seclusion thus far on in its way to perfection, let us see how far, and in what respects, it still falls short of the mark. Not far, I hope; nor will the distance afford an objection, if it be seen that a nearer approach would be impossible.

One cause of imperfection is, that among

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which it is certain nothing was ever farther from men's thoughts,) what could a favoured architect have wished for more?

On such a plan, one of two things must at any rate take place: association in crowds (whence a total departure from the professed design,) or buildings upon buildings to prevent it. The probability is, that both should exist together—the evil of the mischief, and the evil of the expensive and inefficacious remedy. The first is indeed a necessary consequence of the other parts of the plan; and the other, to a greater or less degree, is more than probable.

any two of the most experienced in mischief, neither perhaps, but might still find some new lesson of mischief to learn of the others. The tracts in which their experiences have respectively run, may happen to have been more or less different. Therefore, though but two of this description were left together, and the plan of mitigated seclusion by division into companies carried to its utmost; still it is not carried so far as could be wished.

Another is, the difficulty that may attend the ascertaining the character of the individual, and consequently the determination of the class to which he ought to be referred.

To the first objection, the answer is short. If this degree of seclusion be not sufficient, there is nothing beyond but absolute solitude. But the ineligibility of that plan has, I hope, been sufficiently made out.* Evil of absolute solitude is certain—it is immediate—it is intolerable—it is universal. Evil resulting from an association thus strictly limited is but contingent—it is remote—it is far from universal;—at the worst, it is not great. What does it amount to? that one of them may suggest to the other some trick he was not as yet master of. What if now and then such a thing should happen? Whatever communications are made in this way will be soon made; and the time in which it would be possible to turn them to account in the way of practice will not come for years. But of this enough has been said already.†

So much as to the suggestion of the *means* of mischief. Is the suggestion of *incentives* any more to be apprehended?—a material question; for if the propensity be out of the way, expedients and contrivances will die away of themselves. What should the corrupter insinuate? That there is no danger in guilt?—but the assertion is anticipated and disproved by the very fact of their being *there*. That there is pleasure in guilt?—but the pleasure is dead and gone: the punishment, that has sprung out of its ashes, is present in every tense; in memory, in sufferance, and in prospect. That shame does not flow from guilt?—they are steeped in it up to the lips: they have a scornful world to gaze at them, and each, but one, two, or at most three companions, to keep him in countenance.

What other corruptive theme should come upon the carpet? Debauchery?—it is not practicable; no, not in any shape: checks unsurmountable; instruments and incentives none.

Profaneness?—nor that neither. Profaneness has clamour for its natural associate: separated from this concomitant, it loses its zest. Clamour they are absolutely debarred from: instant punishment would follow it. But who ever whispers an execration, or a profane oath? What is an execration? what is a profane oath? Morally speaking, a mere vulgar expression of anger, or an abjuration of restraint.‡ But is this a place where anger can be gratified or find vent?—is this a place where restraint can be thrown off? To check swearing, is to check anger and audacity; and to check anger and audacity, is to check swearing. To apparent submissiveness they will be forced; and, after a time, from apparent submission, real will ensue. Men become at length what they are forced to seem to be: propensities suppressed are weakened and by long-continued suppression killed.

A more consolatory, a more inviting, and, as it should seem, a much more natural topic of conversation, is the melioration of their lot, present and future: how they shall earn most by their work, and what they shall do with what they earn, now that they can do nothing but work, and that dissipation in every shape is impossible, and all means of it out of reach: how to make the best of their present situation while it lasts: how to employ the distant, though longed-for period of their release, in such projects of productive industry and innocent enjoyment, as their recovered liberty will allow of, and as it would be among the objects of a good plan of management to hold up to them and to facilitate. To be engrossed by the present moment is among the characteristics of that lowest class of individuals, among whom the species of guilt which lead to this mode of punishment are most apt to be found: it is in a more especial manner the character of such of them as have actually fallen into those snares. The force, as well as evil effects of this propensity, stand demonstrated by the very act by which they fell: being in one instance so powerful, is it rational, then, to conclude that in another it will be of no effect? Where a cause is one and the same, some degree of uniformity cannot but be looked for in its force: where its effects happen to be on the evil side, they ought to be looked out for, and provided against; but neither are the good, merely because they happen to be good, to be thrown out of the account, and regarded as impossible. No—as it was the interest of the moment that ruled him in the one case, so will it in the other. When that irresistible prompter beckoned him into the track of guilt, he fell into delinquency: now that, with a much steadier

* See Part I. Section 6. † Ibid.

‡ A kind of interjection. As there are interjections of grief and of surprise, so there are interjections of anger and audacity: and these interjections are what are called *oaths*, and so forth. This observation, while it places the moral mischievousness of an expression of this cast in a somewhat new, and perhaps not uninstructive point of view, shows what ground there is for making them the objects of prohibition and temporal punishment, more especially in such a place.

finger, it points to the paths of innocence, he will confine himself to those paths.

Reformation, therefore, mutual reformation, seems in such a state of things happily much more probable than increased corruption, even among those who are already the most corrupt and hardened.

This nearer and less gloomy view of the probable future, I would wish to recommend to the attention of those desponding moralists, who, led away by general and hasty conceptions, look upon the reformation of a thorough-bred London felon as an object altogether hopeless. Had delinquents of this description been frequently seen under such a course of discipline, and the result had been thus unfavourable, the despondency would have ground to stand upon. But in what instance has an engine of anything like such power ever yet shown itself to human eyes?

Should seclusion, pushed to the very verge of absolute solitude, not yet promise enough, will *colonization* promise more? Turn to New South Wales: 2000 convicts of both sexes, and 160 soldiers (not to speak of officers,) jumbled together in one mass, and mingling like beasts: in two years, from fourteen marriages, eighty-seven births; the morals of Otaheite introduced into New Holland by the medium of Old England.*

SECTION V.

EMPLOYMENT.

1. Of what nature shall be the employments carried on in this house? of what *quality*, in consequence, the labour exacted of the prisoners?

2. In what *quantity* shall that labour be?

3. How much within the day? how many, and what *working hours?*

4. Any more at one *season* than another? and if so, at what season?

5. Any difference according to *length of standing?* i. e. according to the share which has elapsed of each man's respective term?

To each of these questions I will endeavour to find some answer: not surely in every instance with the view of fettering my contractor; nor in any instance is it for his sake that I should think of encroaching upon his free-will: but it will do him no harm at least to hear what I have to say to him in the way of suggestion or advice. Beyond advice I should never think of going with him in that view, though I were armed with all the powers of law; since the more incontestible the goodness of the advice, in the shape of advice, the more palpable the inutility of it in the shape of obligation.

Of these five rules, the third, fourth, and fifth, are inserted here principally in deference to the penitentiary act; the fifth, in particular, is one which would never, I confess, have gained entrance into my imagination, but through the medium of that statute.

I. Of what quality? To that question I must give three answers:—

1. The most lucrative (saving the regard due to health) that can be found.

2. Not one only, but two at least in alternation, and that in the course of the same day.

3. Among employments equally lucrative, sedentary are preferable to laborious.

1. What, then, are the most lucrative, will it be asked? Who can say?—least of anybody, the legislator. Sometimes one sort, sometimes another. No one sort can possibly, unless by dint of secresy or legal monopoly, stand in that predicament for ever. But there are those which are essentially disqualified from ever standing in it: they are those, as we shall see, which stand foremost on the list recommended by the penitentiary act.

2. Thus far, however, may be answered in the first instance: No *one* sort at any time; two at least should succeed one another in the course of the same day. Why? because no one sort will answer all the conditions requisite. Health must never be neglected. The great division is into *sedentary* and *laborious.* Consult health: a sedentary employment must be sweetened every now and then by air and exercise—a laborious employment by relaxation. But exercise is not the less serviceable to health for ministering to profit; nor does relaxation mean inaction: when inaction is necessary, sleep is the resource; a sedentary employment is itself relaxation with regard to a laborious one. And though the body should even be in a state of perfect rest, that need not be the case with the mind. When a man has worked as long as without danger to health he can do at a sedentary employment, he may therefore add to his working time, by betaking himself to a laborious one: when a man has worked as long as without pain and hardship he can do at a laborious employment, he may work longer by changing it for a sedentary one. No one employment can therefore be so profitable by itself, as it might be rendered by the addition of another. *Mixture of employments*, then, would be one great improvement in the economy of a prison.

In the mixture thus made, which of the ingredients, supposing them on a par with respect to profit, ought on other accounts to predominate? The sedentary: and that upon two grounds—*economy* and *peace.* The

* See Governor Philip's Account of the Settlement, 4to, 1791, R. p. viii. 67; Mr. White's ditto, 4to, 1790; and Extracts of Letters and Accounts printed and laid before the House of Commons, in pursuance of an order of April 8th, 1791, p. 3.

harder the labour, the more in quantity, and the more nourishing in quality, the food requisite to enable a man to go through with it. At the same time, the higher fed a man in such a situation is, the more robust and formidable he will be in case of his becoming refractory, and the more likely to become so. Among men in general, but more particularly among men of a description so untamed, a daring temper is the natural concomitant of a robust frame. A blacksmith or sawyer will naturally require more food, and that of a more substantial kind, than a weaver, a staymaker, or a tailor. This latter consideration, it is true, refers only to the common plans: in a Panopticon, be the prisoners well or ill fed, strong or weak, the peace of the house is equally secure.*

Mixture ministers to economy in other ways: it helps quantity, it improves quality. By variety it renders each less irksome; but the less irksome a man's work is to him, the more as well as the better he will work.

Could a man be made even to find amusement in his work, why should not he? and what should hinder him? Are not most female amusements works?—are not all manly exercises hard labour?†

II. How much in *quantity?*—Of course, as much as can be extracted from each without prejudice to health. The question is already put—the answer already given: it is given by the rule of economy—it is given by the rule of severity; nor is there anything in the rule of lenity to contradict it.

III. What, then, should be the *working hours?* As many of the four and twenty as the demand for meals and sleep leave unengaged.

Would the number be too great to be spent in an employment of the laborious class? Give the surplus to a sedentary one. Suppose, then, two employments of the different classes equally productive, and that the laborious one is too fatiguing to be continued during half the number of the working hours, what is to be done? Take away from this employment hour after hour, and transfer them to the unlaborious one: do this, till there remains no more of the former than a man can fill up in that manner, without being debarred by the fatigue from bestowing the whole remainder of the disposable time on the sedentary employment.

To what imaginable good purpose, even in the way of amusement, could so much as a moment of absolute inaction serve?—to conversation? But what should hinder their talking from morning till night, if they are disposed for it? Not meals, certainly; no, nor work neither: few laborious employments exclude conversation, and scarce any sedentary ones.

IV. More hours at one *season* than another?—Another question already answered; and answered in the negative. In all seasons as much as may be; therefore at no season more or less than at another. Less of the laborious, perhaps, at one time than another; viz. less now and then, when the heat of the weather is such as to render the laborious employment too fatiguing: but then so much the more of the sedentary. Now and then, the heat may be so great, for a part of the twenty-four hours, that almost any sort of bodily exertion would be hardship. Be it so: but if this can happen at any time, it is only by accident—it is not the effect of the season, but the event of the day; and though the body rest, it is no reason why the mind should lie in waste. Though it be too hot, for instance, to weave, it will hardly be too hot to write, to read, or hear a lesson.

V. Fewer hours, or less work done in the time, at one degree of *standing* in the prison

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* I forget what little tyrant it was of Greece, whose policy we are told it was, in the view of keeping his subjects quiet, to encourage them to betake themselves to unathletic occupations—in the language of the good old cut-throat morality, effeminate ones. I have taken a leaf, I confess, out of that tyrant's book; the application I make of it will not, I hope, be charged with tyranny.

In my humble way of thinking, the facility of stifling dispositions unfavourable to security is preferable to the glory of subduing them, or the necessity of punishing them.

Among laborious employments, the greater part arm the body—all arm the mind. Why give any unnecessary increase to the force which it is your great study to keep in subjection? The more active, the stronger; and the stronger, the more ungovernable. Vigour and courage in a felon constitute the danger and the weakness, as in the good citizen they do the strength and security, of the state.

All this, be it once more observed, regards the common plans merely. In a panopticon I should not care how robust my prisoners were; nor even how they were armed, so it were not with firearms. In a common penitentiary-house, in the sort of prison built by the penitentiary act, the difference is no trifle. There they are to be in crowds: a single turnkey or taskmaster to watch over them: he inclosed in the same room with them, and without anything to keep them at a distance: they furnished with tools and materials for hard work, convertible into weapons of offence: the room closed and screened from view like other rooms: assistance out of view and out of reach.

† It is an observation made somewhere, I think, by Locke, in his book on Education, that for children amusement is to be obtained not less effectually from cheap and profitable occupations, than from unprofitable and expensive ones. A recommendation he accordingly gives is, to make a point on all occasions of giving to employments of the former description the preference over those of the latter. If the propriety of the preference is indisputable with regard to youthful innocence, how much more palpably so in the case of malefactors, whose occupations are to be allotted to them in the way of punishment for their crimes?

than at another?—Why should there? or, consistently with the rules already laid down, can there be? At every period, as much work as can be obtained—as great a part of the twenty-fours employed in work, as, consistently with the above limitation, can be; therefore, in every part the same.

Thus says plain humble economy: what says the penitentiary act? We shall see. The first thing it does is to set out with a wrong object—labour for labour's sake. Had economy been the mark, the demands of lenity, as well as of due severity, might have been all along satisfied with little trouble, and without any expense. Abandoning the first, it attains neither of the other two; aiming sometimes at the second, sometimes at the third, it attains neither: vast expense in straining the discipline, and it is inordinately relaxed; vast expense in relaxing it, and it is intolerably severe.

At the first step, economy is kicked out of doors. Two classes of prisoners—two classes of employments; one requiring the most violent exertions—the other, none. Whether a prisoner shall be put to the one or to the other is to depend—upon what? The money to be earned? No; but upon "age, sex, health, and ability;"—age, sex, health, and ability, and nothing else. What is the professed object?—profit? No: *Hardness, servility, drudgery*—and there it ends. "Every" prisoner is to be "kept"—yes, *every* prisoner—so far as is consistent with—"sex, age, health, and ability, to labour of the hardest and most servile kind, in which drudgery is chiefly required;"—such as "treading in a wheel, drawing in a capstern," and so forth; "and those of less health and ability, regard being also had to age and sex, in picking oakum, weaving, spinning, knitting, or any other less laborious employment," [§ 33.] How many, then, are to be employed in the sedentary sort of employments?—as many as can be employed to greater advantage than in the other? No; but those, and those only, to whom, for want of health and ability, the "hard," and "servile," and "drudging" work cannot be given. No picking, no weaving, no spinning, no knitting, though orders came without number for that sort of work, and not one for the labour of the capstern or the wheel. It is to be a mere Catherine wheel, or an Ixion's wheel—a mere engine of punishment, and nothing else. Two modes of employment present themselves: the first as hard work again as the second—the second as profitable again as the first; the individual equally free for either. What can be done? Either the unprofitable one must be given him, and the profitable one rejected, or the principle of the act departed from, and its injunctions flatly disobeyed.

We are told somewhere towards the close of Sully's Memoirs, that for some time after the decease of that great and honest minister, certain high mounts were to be seen at no great distance from his house. These mounts were so many monuments of his charity; for those of his economy stood upon very different and more public ground. The poor in his neighbourhood happened to have industry to spare, and the best employment he could find for it was, to remove dirt from the place where it lay, to another where it was of no use.

By the mere force of innate genius, and without having ever put himself to school to learn economy of a French minister, a plain English jailor, whom Howard met with, was seen practising this revived species of pyramid architecture in miniature. He had got a parcel of stones together, shot them down at one end of his yard, and set the prisoners to lug them to the other: the task achieved, "Now," says he, "you may fetch them back again." Being asked what was the object of this industry, his answer was—"To plague the prisoners." This history is a parable—this governor the type of our legislator. Ask him, "What is work good for?" answer—"To plague prisoners?"*

We have seen the *constant* benefit of *alternation*. What says the act? Laborious with laborious, sedentary with sedentary, if you please. Sedentary with laborious? Yes: if you can make a prisoner go backwards and forwards from constitution to constitution, from sex to sex, and from age to age. We have seen the *occasional* benefit of *change:* what latitude does the act allow on this head? The same. Should a greedy governor attempt in either way to smuggle economy into the house, the rigid hand of a committee-man, or an inspector, or a visiting justice, might pull him by the sleeve and say to him, "Sir, this must not be; it is contrary to law. You may put those of the one class to tread in a wheel, draw in a capstern, saw stone, polish marble, beat hemp, rasp logwood, chop rags, or make cordage, as you please; you may set the others to pick oakum, weave sacks, spin yarn, or knit nets: but know, sir, that by him who is for the capstern or the wheel, no nets are to be knit, yarn to be spun, sacks to be woven, or oakum to be picked. When the capstern heaver has hoven till he can heave no more, he is to sit, lie, or stand still and lounge: when he who has been picking oakum is in want of air and exercise, he may go and take a walk, provided his walking hour be come, and that no other use be made of it. And mind, sir, that a man of the wheel-walking cast be not turned

* Howard on Lazarettos, p. 147.—I beg the jailor's pardon: what is above was from memory: his contrivance was the setting them to saw wood with a blunt saw, made blunt on purpose. The removers of mounts were a committee of justices.

over to oakum-picking — although all the wheels should be engaged, or although there should be a demand more than can be supplied, for the oakum, and none for the labour of the wheel. For know, sir, that we are in Hindostan — Bramah has spoken — the castes must not be confounded."

"Imagination! imagination! — as if there were a magistrate in the kingdom that could hold such language." O yes, many: patience, and we shall see. Meantime, does not the act say all this? What does it say then? What is the object of the clause, or what the use of it?

What is at the bottom of this predilection for hard labour? Sound. The labour is *made* hard, that it may be *called hard;* and it is called *hard*, that it may be frightful, for fear men should fall in love with it. *Hard labour* was the original object. The error is no new one: sentences of commitment to hard labour are as frequent in our penal code as the execution of them has been rare. It is no peculiar one: it is to be found upon the continent as well as here. Dutch *rasp-house* — Flemish *maison de force* — everything impressed the mind with the idea of hard labour. *House of hard labour* was accordingly the original name. *House of hard labour*, it was suggested by somebody, is a name by which no house will ever be called, and the well-imagined word *penitentiary-house* was put in its stead. But though the name was laid aside, the impression which had suggested that name remained in force.

The policy of thus giving a bad name to industry, the parent of wealth and population, and setting it up as a scarecrow to frighten criminals with, is what I must confess I cannot enter into the spirit of. I can see no use in making it either odious or infamous. I see little danger of a man's liking work of any kind too well; nor if by mischance it should fail of providing him in suffering enough, do I see the smallest difficulty of adding to the hardness of his lot, and that without any addition to the hardness of his labour. Do we want a bugbear? Poor indeed must be our invention, if we can find nothing that will serve but industry? Is coarse diet nothing? is confinement — is loss of liberty in every shape — nothing? To me it would seem but so much the better, if a man could be taught to love labour, instead of being taught to loath it. Occupation, instead of the prisoners' scourge, should be called, and should be made as much as possible, a cordial to him. It is in itself sweet, in comparison of forced idleness; and the produce of it will give it a double savour. The mere exertion, the mere naked energy, is amusement, where looser ones are not to be found. Take it in either point of view, industry is a blessing: why paint it as a curse?*

Hard labour? labour harder than ordinary, in a prison? Not only it has no business there, but a prison is the only place in which it is not to be had. Is it exertion that you want? violent exertion? Reward, not punishment, is the office you must apply to. Compulsion and slavery must, in a race like this, be ever an unequal match for encouragement and liberty; and the rougher the ground, the more unequal. By what contrivance could any man be made to do in a jail, the work that any common coal-heaver will do when at large? By what compulsion could a porter be made to carry the burthen which he would carry with pleasure for half a crown? He would pretend to sink under it: and how could you detect him? Perhaps he *would* sink under it — so much does the body depend upon the mind. By what threats could you make a man walk four hundred miles, as Powell did, in six days? Give up, then, the passion for penitentiary hard labour, and, among employments not unhealthy, put up with whatever is most productive.

It is to this grim phantom of hard labour that economy, however, is sacrificed in a thousand shapes. Trades fixed, though they should be losing ones: working-hours—half, as we shall see, struck off at one stroke; then a considerable share of the remaining pittance; then again a double share: laborious employments prescribed, to the exclusion of sedentary ones; employments which demand much food, to the exclusion of those which require but little: and after all these sacrifices, and all this regulation, more regulation added, by which it is made impossible, as we shall see, to have hard labour as hard here as elsewhere.

As to the general complexion of the employment, the act, as we have seen, is peremptory: as to the particular species, it contents itself with recommendation. But even recommendation had much better have been let alone. Bad or good, a recommendation in such a matter has no business in a law: bad, it is pernicious; good, it is unnecessary. Is an act of parliament a place to say to a man, "Sir, here is a trade which will answer your purpose?"

Good when given, it will be bad soon after. Two things, and two things only — a secret and a monopoly—can give to any sort of trade a permanent superiority of advantage. Bad? it is positively pernicious — it is not simply

* The Chevalier Paulet's views on this head suit better, I must confess, with mine. In his establishment, a capital article in the penal list is the punishment of forced idleness; and without dividing his boys for the purpose into two classes and three classes, or plaguing his managers with governing committees, he contrives to render it sufficiently uncomfortable. See an interesting account of the establishment of that generous and intelligent philanthropist in the Repository, Vol. I.

useless. Recommendation falling from such a height acquires force, and has the effect of a command. We shall see it has. Unfortunately, the recommendations given here are not only bad in the details, but bad in principle: bad in principle, by assuming that human force, when separated from human reason, is capable of being made use of to advantage; bad in detail, by exhibiting among the modes of giving application to human force, some that are peculiarly disadvantageous.

In the first place, bad in principle. There are two modes of applying human labour: one is where the task of *generating* the force and that of giving *direction* to it, are the work of the same man; as in common sawing performed by hand, or turning in a foot lathe: the other is, where the task of *production* is performed by one man, and that of *direction* by another; as in a turning lathe turned by a detached wheel. In the latter way, human labour, when employed for the mere purpose of labour, can never be employed to advantage upon a large scale. Why? because, not to mention wind, water, and steam, there are always animals to be found, any one of which may be made to generate more force than many men, without costing so much to keep as one. If, then, all the brute force you want is no more than what a single man is enough to generate, human labour may so far be employed in that way to advantage; for you cannot have a beast to work without employing a human creature, a boy at least, to keep it to its work.* But if the quantity of force you want is anything above what one man can generate and keep up for a sufficient length of time, to employ human force in that brute way, can never answer: an old blind horse, an ox, perhaps even an ass, will turn a wheel, a little boy will serve for driving, and the keep of beast and boy together will perhaps not exceed the keep of one man, certainly not equal that of two.†

The elementary *primum-mobiles*, wind, water, steam, wherever they can be applied, are applied, as being cheaper, in preference even to the animal: still cheaper of course they must be than that which consists of human labour.‡

"But do not you yourself make this use of human labour? do not you employ in this way, not one, not two of your prisoners, but the whole number?" Yes; that I do: but why? because I get it for nothing; which is still less than what the boy and the ass would cost me. I can undersell the broom-maker,

* The instance of a *turnspit dog* is an exception: but the force that can be generated in that way is but small, and that for no long continuance.

Could an *elephant* be made to tread in a wheel in the same manner? If he could, here would be a source of mechanical power not to be despised in Hindostan: whether it could ever be worth while in an economical view to keep an animal of this sort merely for that purpose, is another consideration. But wherever elephants are kept already, either for military purposes or for show, their labour, could it be employed in this way at all, might be employed to very considerable advantage. If, at twice or thrice, an elephant could be made to walk in this way to the amount of six hours in a day, three elephants relieving one another would keep up a fund of motion that would last 18 hours out of the 24, which is more than the usual number of working hours in a day: four elephants would keep up a perpetual motion. Speaking from the moment (for reflection and research on such an occasion will hardly be expected) there are few wind-mills or water-mills, I should suppose, that occupy so great a force. In a wheel of a size sufficient to admit an animal of this bulk, the acclivity would be very gradual; and the height would be such as would admit of a rider, if necessary, without difficulty. The form as well as manners of the animal seem to render it at least as fit for this sort of service as a turnspit dog; much more so than any of the common beasts of draught: though even these, could they be made to work at all in this way, might perhaps in this way be worked to more advantage, than by drawing.

Where they are kept for military purposes, the profit that might thus be made of their labour in time of peace might thus pay for the heavy expense of their maintenance in time of actual service. Even where they are kept merely for state, reasons for employing them in this manner would not be wanting. It would be a means of preserving their health, which otherwise may be soon destroyed, and the life of the animal cut short for want of exercise. Several animals of this sort have been imported into this country in the course of the present reign. Two at a time I remember seeing at the Queen's house. The uncomfortable state in which they were kept, debarred from all exercise, and confined to a small stable, where they had scarcely room to turn, or even stand at their ease, soon proved fatal to these noble quadrupeds, whose lives nature had designed to emulate in duration those of the first patriarchs among men.

† Nor yet can it answer to employ a man for generating force, but upon the supposition that the whole quantity of the commodity capable of finding a market is no more than what the brute force generated by two men is able to produce. Suppose it equal to the force of three men, one man to give direction to the force, with a beast, and a boy to drive it, could afford the commodity so much cheaper as to break the other two, with their respective *directing* partners.

‡ In the economy of mechanical operations, one of the most fertile sources of improvement is the separating the art of giving direction to force, from the labour of generating it. Great is the advantage that may be made in this way, even where this latter operation is left to man: much greater of course where it is turned over to more proper agents. A single man, or in many instances a single child, and that a very young one, may find direction for a very powerful machine, or a very numerous assemblage of less powerful ones: instance—the spinning-machines, and the various other engines employed in the manufactories of the different sorts of cloths.

who stole the sticks: I steal my brooms ready made. The labour I employ in this way, I steal the whole of it from idleness. The same labour does the business of health and economy at the same time. My prisoners, if they did not walk in a wheel, must, like other prisoners, walk out of a wheel: and, in the latter case, the same degree of exercise would require more time spent in walking, than in the former.

Inexpediency in detail is another property of these imperious recommendations. For instances of laborious employments, eight sorts of operations are promiscuously brought together: "Treading in a wheel, or drawing in a capstern for turning a mill or other engine, sawing stone, polishing marble, beating hemp, rasping logwood, chopping rags, and making cordage."

What are we to understand from this heterogeneous specification? In the two first instances, the only thing mentioned is the mode of *generating* the force: in the other six, the *direction* to be given to it, the application to be made of it. Is it that the force generated, as in the two first instances, is meant to be applied to produce the effects respectively specified in the other six? Hardly. Sawing stone and polishing marble, I am assured, are operations that have never yet been performed any otherwise than *by hand.* Beating hemp and rasping logwood are performed thriftily by wind and water; unthriftily here and there perhaps by hand: hemp-beating, especially, so unthriftily as to be banished from all free manufactories, and confined to prisons, where its sole use is, like that of the blunt saw, to plague those who work with it. Chopping rags is performed, at all paper-mills I ever saw or heard of, by the force of that element, an abundant supply of which is essential to the manufacture. Was a business like this ever performed by a mill or other engine moved by a walking-wheel or capstern? I must have good proof of it before I believe it. My conclusion is, that in the recommendation of the wheel and the capstern "for turning a mill or other engine," the views of the legislator had not got the length of pitching upon any particular sort of work to be performed by the mill or other engine—that the operations mentioned immediately afterwards were not meant as instances of work to be performed by such means; but that the intention was, that they should all of them be performed by hand. If so, two different misrecommendations are enveloped in this one clause. One is, the employing of human labour for the generation of brute force, in preference to the elementary and other irrational agents: the other is, the performing by hand a variety of operations, not only to the neglect of the most advantageous methods of employing machinery, but to the neglect of those very methods which itself has been pointing out.

As to the making of cordage, the ineligibility of such an employment for such a place has been pretty fully shown above.* Immense space—that space inclosed at an immense expense, which, be it ever so immense, will hardly be sufficient—and all this to carry on a manufactory of implements of escape.

The strangest recommendation is that which is intimated by the placing the labour of the wheel and that of the capstern on the same line, as if indifferently applicable to the same purposes. The first is of all the known modes of generating pure force by human exertion the most advantageous: the other, unless in very particular circumstances, perhaps the least so. In the place in question, these circumstances are never to be found. Compared with a perpendicular wheel, the sort of horizontal wheel called a capstern would, in such a place, be a miserable contrivance. The most painful and intolerable muscular contraction will not produce, in the latter way, a quantity of force approaching to that which is produced by the successive application of the weight of the body in the mere act of walking in the other. The capstern-heaver would be dead before the wheel-walker felt the sensation of fatigue.† The advantage of that horizontal wheel is, that you can put more men by far to it than you can put to the perpendicular one: you can lengthen the levers; you can multiply them to a great degree; you could even put story of them over story. Hence it is of use where, having plenty of men, who if not employed in this way could not be employed at all, you want now and then a heavy lot of work done in a short time. Such is the case in seamanship. Accordingly, in seamanship the capstern is made use of with great advantage—in heaving anchors out, in raising them, and so forth; and I question whether there be another instance.‡ Since

* Part I. Section 20.

† According to Desaguliers, the force which a man can exert in towing is upon an average equal to no more than 27lbs.; that is, a force that would serve to raise a weight to that amount; for instance so much water out of a well. But "drawing in a capstern" is towing. According to the same philosopher, 140lbs. may be reckoned the average weight of a man: with this whole force a man acts, when walking in a wheel. The principle of the walking-wheel is therefore more than 5 times as advantageous as that of the capstern.

‡ Am I right? I think I have traced the error to its source. On board the ballast lighters, the capstern was employed to raise gravel; for the captain was a seaman. Now as anchors are raised in that manner, why not gravel? On board the ballast-lighters, gravel is raised upon the capstern principle; and that surely is hard labour. But hard labour is the very thing we want, and there it is for us.

the world began, I do believe it has never been employed to keep up a constant force.

Even laying profit out of the question, as the authors of the penitentiary act do, and setting up labour as its own end without looking for any thing beyond it, we shall find the lesson equally pregnant with delusion. Even in this point of view, nothing can be more opposite than the labour of the capstern and that of the wheel. Wheel-work is open to abuse on neither side: capstern-work, on both sides.* Laziness on the part of the workman, negligence or partiality on the part of the inspector, may reduce the exertion to nothing: tyranny may screw it up to a pitch fatal to life.

Nor is wheel-work less happily adapted to the purposes of economy in other points of view. Knowing by trial the quantity of force necessary for giving motion to your wheel, you can provide for the keeping up of that force with the utmost certainty: you can know before-hand what each man can and will do, as well as afterwards whether he has or has not done it. In this way, as no man can cheat you, nor is the quantity of work dependent at all upon good-will, slave's work is worth as much as freeman's work, neither being capable of doing more nor better than the other in the same time.†

The regulation about hours strikes me, I must confess, as a most extraordinary one. Working-hours, never more than ten out of the four-and-twenty; and, for a quarter of the year, not more than eight: eight for three months, nine for two months more, and ten for the other seven. For greater certainty, a *curfew* clause: all lights and fires out before nine. Of the quantity of labour that might be had, more than five parts out of 15 in point of *time*, as we shall see,‡ thrown away, for the sake of getting the other nine or ten of a hard sort: and all the while, by this very limitation in point of time, matters so arranged, that it shall be not only difficult on other accounts to have the labour as hard here as elsewhere, but upon this account impossible.— This an act for the promotion of hard labour! Say rather for the prevention of it.

What a lesson to the country! That little more than half the labour the honest poor, the industrious tradesman, are forced to go through in order to live, is a lot too hard for felons! What is the tendency, not to say the fruit, of all this hard labour so unhappily bestowed in the field of legislation? to render hard labour impossible in the place it is specially destined for, and odious everywhere else.

In one circumstance of it, the regulation is a perfect riddle to me:—most work when the weather is hottest. That the number of working-hours should be made variable according to the heat of the weather, how little necessary soever as we have seen, was, however, natural enough; but the principle by which the variation is determined seems a perfect paradox. When was the number to be the greatest?—when the season was hot-

* Wheel-work is mere foot exercise: capstern work is arm exercise. In the former, the effect is the immediate result of muscular exertion, and proportioned to that exertion, be it ever so great or ever so little: in the latter, it is the result of mere weight—the weight of the body successively applied to the different parts of the circumference of a wheel; and so long as the same pace is kept up, that weight, as well as the exertion by which it is applied, is invariably the same.

In the wheel-work, if there were twenty men in a wheel, you would know exactly what each man's exertion was, and what the share it had in the production of the common effect: in the capstern-work, though there were but two men, you could not ascertain either man's share.

† Could not a man cheat, it may be said, by setting his foot down on the same spot from which he took it up, or even backward instead of forward? I should doubt it: and if it were feasible, an effectual remedy might be found. Even in a single wheel (I mean a wheel with a single man in it) the *impetus* already acquired by a few turns would make it much easier to a man to go on, than to step backward, or in the same place: much more in a double wheel, especially if the deceit were practised by one alone without the concurrence of the other. In the only walking wheel I ever saw (which was made for a carriage to go without horses) there were steps in the inside for the convenience of treading. These would serve likewise to render deceit more difficult, as well as to maintain regularity in the pace. But deceit might at any rate be prevented, especially with the help of these treading-boards, by prescribing the number of steps to be taken within a certain time: a small index-wheel connected with the main wheel, as in the instrument called a *way-wiser* for measuring ground, would serve to show with the utmost exactness how far the injunction had been observed.

In some instances, the quantity of the *effect* produced might be made to show the number of turns that had been given to the wheel: for example, in raising water, the quantity of water that had been raised. But this depends upon the nature of the work, and the instances in which it would hold good are comparatively but few. The index-wheel (which of course must be situated in such a manner as to be out of the reach of having its indications falsified by the labourers in the wheel) is therefore the preferable resource.

To keep the force thus gained to an equality, in any operation in regard to which the difference in point of weight between man and man were liable to produce occasional deficiencies, those whose natural weight was under the mark might carry artificial weight in proportion: and if with this addition the exercise were too much for any one, a proportionable abatement might be made to him in the article of *time*. Weight might thus be carried, not, as in the equestrian phrase *for inches*, but for lightness and for strength.

‡ See Section *Distribution of Time*.

test—in the height of summer: when the least? when the season was coldest—in the depth of winter: in the temperate months, it was to take a middle course. What can have been the object here? In a clause in which the quantity of labour was directly and professedly limited and reduced, one should have thought, it had been lenity and indulgence. But where is the indulgence of working a man hardest when he is hottest, and giving him least work when work would be a blessing to him, to keep him from the cold?

Even the propriety of marking the temperature in this imperfect and indirect way by the season, instead of the perfect and direct way, would itself be questionable. For observe the consequence: work is to be lessened (or, as this clause will have it, increased) upon the supposition of its being sultry, when perhaps it is below temperate: work is to be increased (or, as this clause will have it, diminished) upon the supposition of its being hard weather, when perhaps it is above temperate. Whether the thermometer is between 20 and 40, or between 50 and 60, or between 60 and 80, is a fact just as easy to ascertain as whether it be January, April, or August. If the idea of regulating work by temperature is not ridiculous, it is not accuracy that will render it so. If heat and cold are to be measured, it is surely as well to do it by a right standard as by a wrong one.

But we have already seen that it is *quality* only, and not *quantity* of work, that ought to be influenced by temperature; and that neither the one nor the other ought to be regulated by law.

Eight then, and no more, is the greatest number of hours during which, in the cold season, any sort of work, sedentary or laborious, is in this establishment for hard labour to be carried on: so at least says section 34. True it is, that by section 45, a possibility is created of a prisoner's working at additional hours over and above those which have been mentioned. A possibility? Yes; and that is quite enough to say of it. A special permission must be given by the committee: it is to be given only "to the most diligent and meritorious;" only "in the way of reward or encouragement"—they may choose whether they will give it in this shape, or in that of an allowance of a part of the earnings of the stated hours: it is to be only "during the intervals of the stated labour;" not therefore in any interval between a time of labour and any other time, such as that of rest or meals: all "working tools, implements, and materials"......that "will admit of daily removal," are, by section 34, to be "removed" when the "hours of work are passed, to places proper for their safe custody, there to be kept till the hour of labour shall return;" and by section 40, "the doors of all the lodging-rooms are to be locked (with the prisoners, I suppose, in them,) and all lights therein extinguished, after the hour of nine."

A possibility (did I say?) of extra work? Yes; and what is there more? The governor, on whom it so unavoidably depends, has motives given him for thwarting it, and none for forwarding it: none for forwarding it, since the earnings at these extra-hours are to go entire to the prisoner-workmen—no part of them to him. But of the labour of the stated hours, a great part, if not the whole, is to go to him. [§ 20.] Of the hard work, which is the only sort the act allows of where hard work can be got, so much as can be got within the compass of the stated hours, he will therefore be sure to get from them: but of the only two species of labour which the act exhibits at the head of the list of specimens and patterns (treading in a wheel, and heaving at a capstern,) there is not one which it would be possible for a taskmaster to compel the continuance of, so much as during eight hours of the twenty-four, the smallest of the numbers of stated hours prescribed. Judge, then, whether he will give up any of that time which is his, in order to make *them* a present of it.*

Another anticlimax not less extraordinary is yet behind: labour made less and less, according to length of standing. When a man has served a third of his time, so much is to be struck off from his work;† when two thirds, so much more. Less and less of it there is thus to be, the more valuable it is become to everybody, the easier it sits upon himself, and the nearer he is arrived to the period when he will have that and nothing else to depend upon for his subsistence.‡

* What, then, does this clause amount to? anything or nothing? Shall we ask the Gloucester magistrates? Their decision is in the negative. Punctual copyists of the other provisions of the act, they have passed this by without notice.

† "From his confinement and labour," says the act (§ 38.)

‡ "The offenders......shall be divided into three classes; which shall be called the *first*, *second*, and *third* class; for which purpose the time for which such offenders shall severally be committed shall be divided into three equal parts; and during the first part of the time of the imprisonment of every such offender, he or she shall be ranked in the first class, and during the second part of such time, he or she shall be ranked in the second class, and during the third and last part of such time, he or she shall be ranked in the third class; and the confinement and labour of such offenders as shall from time to time be ranked in the first class, shall be most strict and severe, and the confinement and labour of the offenders ranked in the second class, shall be more moderate, and the confinement and labour of those ranked in the third class, shall be still more *relaxed;* which several degrees of confinement and labour, so to be affixed to each class, shall from time to time be settled by the committee, by orders of regulation to be approved of in

What is at the bottom of all this contrivance? — possibly the principle of the *blunt saw:* when prisoners require most *plaguing*, most labour is to be got out of them; when less plaguing will suffice, the superfluous labour is to be tossed by, as being of no further use. While their work is troublesome to them, and they are awkward at it, and it is worth but little, they are to be made do as much of it as they can: the more it comes to be worth, as it answers in a less degree the purpose of *plaguing* them, the less of it there is to be.

At Westminster school, the climax of instruction takes, if it is not much altered within these thirty years, a somewhat different course. Whatever be the task, the longer a boy has been about it, the greater is the quantity of it expected from him in a given time. Memory, invention, whatever be the faculty concerned, the supposition is, that it would rather be improved than impaired, fortified than debilitated, by use. If ten lines are to be got by heart for an exercise in the second form, twenty lines are to be mastered the same way in the third. If a Greek distich is to be construed and parsed in the fourth form, a tetrastich is to be discussed within the same time and in the same manner in the fifth. The supposition there evidently is, that learning is a good thing — that the more a boy can be made to imbibe of it the better — and that, in short, he could hardly have too much. That any proposition to this effect was hung up in any part of the school-room, is more than I ever heard. But if it had been, it could not have been more thoroughly recognised, nor the truth of it more steadily assumed in practice. In these new invented schools of penitence and industry, a proposition not less steadily assumed and implicitly conformed to is, that industry, that productive labour, is a bad thing — that it is fit only for punishment — that an honest man cannot have too little of it: that it is fit only for felons, and for them only while the marks of guilt are fresh upon their heads — that the less of it a man goes through, the better it is for him. Accordingly, the object of this clause is to wean him from it by degrees; regarding it as fit not for ordinary diet, but only for physic, the dose of it is lessened, in proportion as the effect with a view to which it was first administered, is supposed to be produced.

For my part, I see nothing in the principle pursued in the school of literature that should render it unfit for adoption in the school of productive industry: I can find nothing in the design of either institution that should prevent its reception in the other. But were there in this case a repugnancy that I do not see, so that all that I could obtain were the option of giving it to the one or to the other as I chose, I must confess it would be to the more humble establishment of the two that I should be disposed to give the preference. It is by reading Latin and Greek that we learn to read Greek and Latin; but it is by digging, and grinding, and weaving, that we live.

I have sometimes thought that, considering the light in which the matter seems to have been viewed, industry has been let off tolerably cheap, and that it is a happiness the divisions in this newly-devised school of industry have not been more than half the number of those in the school of literature. Had there been as many classes at Wandsworth as there are *forms* at Westminster, it would not be easy to say to what profundity of gentlemanly repose the anti-climax might have been pushed. As, in the one place, the seventh form is filled with the few whose persevering spirit enables them to tug at Hebrew roots; so, to the other, none should be admitted whose oblivion of labour had not learnt to shew itself at their finger's ends, as in China, by a seven-inch length of nail.

The stock of relaxants is not yet exhausted. When hours after hours of the working-time have been struck off, for fear the prisoners should not yet be idle enough, some of the best of them are to be picked out, their work is to be taken altogether out of their hands, and they are to be suffered to go idling about the house. By a separate section inserted for the purpose (§ 39,) the governor is empowered "to employ at his discretion any" ......" who shall be ranked in the third class, as servants, overseers, or assistants, in the management of the works, and care of their fellow-prisoners, instead of being confined to such their daily labour as aforesaid."

I say *idling;* for house-service, in comparison of a working trade, is idleness: superintendence of course, still greater idleness. A preceding clause (§ 32) took them from whatever good trades they had been bred to, to put them to a bad trade, contrived for punishment and nothing else. A part of them are now to be taken even from that bad trade. By the time their term is out, and they are to be turned loose again upon the wide world, they are to have unlearned every thing that can afford them the smallest prospect of a maintenance. For in such a place what possible provision can house-service lead to? who will take house-servants from such a house? House-service requires confidence: character is insisted on. Of handicraft trades, most require very little, some scarce any.

The clause calls itself an enabling clause What is it? Were it any thing, it would be a restraining one. Servants — what servants worth speaking of can really be wanted in such a house? Are the prisoners to be too

manner aforesaid, but so as not to defeat or elude the special provisions made and appointed by this act."

proud, or has the act made them too busy, to sweep out their own rooms? Could not the task of keeping clean the common rooms (since upon this plan there were to be common rooms) be performed by rotation? does it require picked men to do it? I say it is in effect a restraining clause. Supposing no such regulation, such sort of service, what little of it there is necessary, would have been performed on one or other of two plans:—either upon the rotation plan, every one doing a small share; or, were any selection made for a sort of service requiring no sort of skill, it would be of such as were awkwardest at their trades. I speak of a manager of common plain sense, who were not handcuffed, and whose profit were staked upon the success. Here he is dissuaded from the rotation plan; an establishment of servants is recommended to him; and in choosing them, he is forbidden to take them from any of the three classes but that which includes such as are expertest at their trades, as far as expertness is to be inferred from practice.

I call it, then, a restraining clause—and so it is with regard to good management and industry: for with regard to abuses and idleness, its enabling tendency is not to be denied. The objects we are most conversant with will naturally be uppermost in our thoughts. In the creation of this new microcosm, no wonder if the old and great world should sometimes have been in view. Of this chief seat of relaxation in the most relaxed of all the relaxed classes, the idea seems as if it had been taken from Lord Chesterfield's hospital of incurables: niches are accordingly left in it here and there, capable of being fitted up into little snug places and sinecures.

Of all this elaboration and complication, what, then, is the effect? Mischief—mischief in all its shapes: listlessness, idleness, incapacity of earning subsistence—mischief, and nothing else. What was the end in view? Not mischief, most assuredly. What then? In good truth, I do not know. Punishment is one use it is applied to, and that the only use. By § 47, powers of punishment are provided, and that of "removing such offenders, if ranked in the second or third class, into any prior class," is of the number. What then? This delicate piece of mechanism, with all its softness, and smoothness, and relaxation, is it after all but an engine of punishment? An excellent one it would be, were it as good as it is expensive. Perillus's bull, had it been of gold instead of brass, would scarce have equalled it.*

This reason, such as it is, makes bad still worse: complication and obscurity, and that

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* Calculation of the expense of this engine of punishment, for 900 prisoners, being the number provided for by the Act:—

Suppose gross average value of each prisoner's work for a day, . . .	£0	0	3
This makes for a week, ...	0	1	6
For a year, ...	3	18	0

Proportion to be struck off from the labour of each prisoner upon his removal from the first class to the second, one hour out of nine, the average number of hours, I set at one-ninth: and a manager would hardly think of striking off less than this, if he struck off anything.

Additional deduction on the removal from the second to the third—one ninth *more*.

Result.—Gross annual value of the labour of 900 prisoners, without the deduction in question, ...	£3510
Ditto of one-third of the number, viz. 300, being the number in the second class,	1501
Deduct one-ninth from the total value of the labour of this second class, ...	130
Ditto two-ninths from that of the third class,	260
Total deduction, . .	£390
Present value of such annual deduction, considered as a perpetual rent-charge at 30 years' purchase, ...	£11,700

I think I shall not be accused of having rated the value of the labour extravagantly high at 3d. a-day, considering that it is but the gross value, and that it takes the economy at the highest pitch to which it can be pushed, not only by this act, but by the accumulating powers of a series of acts explanatory and emendatory upon the same principles to the end of time. I say, then, that for £11,700, not a Perillus only, but even an ordinary goldsmith of the present degenerate age, could make a very decent bull, big enough to broil a middle-sized man in, of the very best gold. I mean, provided he were allowed to take his own way for making it; for I would not answer for him were he to be obliged to learn his art, like the manager of this manufacturing concern, from instructions beat into him by act of parliament, nor if the thickness of the gold were to be regulated upon the same principles as the dimensions of the houses in the penitentiary-town are by this Act.

Whether the deduction was meant to be made in the article of *time*, or in the article of *exertion*, it comes to the same thing. It must have been in one or other; for it is not "*confinement*" only that is to be first "more moderate," then "still more relaxed," but "*labour.*" Time was the element best adapted to calculation, as being the only one of the two that was susceptible of a determinate shape. If the act meant not *time*, but degree of *exertion*, it did still worse; for that would be giving the power its most arbitrary form. The intention could hardly be, that the relaxation should be administered by change of trade: the economy would be still worse. Is the new trade a less productive one than the old one? Here is loss, then, incurred to no purpose. Is it more productive? Still the same loss; only precedent, instead of subsequent—a bad trade carried on for a whole year for the sake of changing it for a better at the year's end. Is it neither more nor less productive? Still there is loss; for by the supposition, in the second trade there is to be the same produce with less labour. With equal labour it would, therefore, have been more productive than the first: it ought, therefore, to have been taken up from the beginning, instead of the first. Add to this, in every case, the loss that must result from the time consumed in learning a new trade.

Another mischief: Not only the *labour* is thus

complication a cover for tyranny and injustice. The meaning, if I do not misunderstand it, was, that for a prison-offence, the committee should have the power of adding to any prisoner's term of confinement an additional one, ever so short or ever so long, so as it did not exceed the original one. In that case, the simple course would have been to have said so. Instead of that, the meaning is expressed in a round-about way by reference to these classes. What is the consequence? That when six years, for instance, was the term for the original offence, for the prison-offence you can have nothing less than two years; nor if you would have more than two years, anything less than four years: two years or four years, then, with an additional time, such as the committee may think proper to add to it, is the only alternative: two years the least quantity in such a case; or else this precious engine, which it cost so many thousand pounds to make, is not to be used; if you won't use it harshly, you shan't use it at all: so says the letter at least of this law.*

The necessity, howsoever it might sit upon the prisoners, would not sit very heavy upon the governor: I mean, if he has in effect that interest in the productiveness of the establishment which the act wishes him to have. It will be no secret to him, that the same quantity of labour at the expiration of an apprenticeship, is worth rather more than at the commencement of it. Nor will the necessity sit much heavier on the committee, if they either set a value upon the friendship of the governor, or set the same value upon this engine of punishment as appears to have been set upon it by the maker: the committee of three, I mean, who, when not so many as three, are not more than one, and who, sitting in the dark, with an interested prosecutor, their creature and their dependent, at their elbow, cumulate the functions of judge and jury. This I know, that were I a candidate

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to be more and more relaxed, but the *confinement* likewise. What is the consequence? Corruption—corruption still greater than before, if already it was not brought to its highest pitch. For how is it where the confinement is strictest? Even there, association promiscuous, or nearly promiscuous, takes place at different times of the day—at working-times, at meal-times, and at airing-times. How then can the confinement be relaxed, unless it be by increasing the already too great liberty of association? They are not any of them surely to be let out of the house? they are therefore to be suffered to go about idling and confabulating and confederating within the house. And at what period is this increased relaxation and increased faculty of association to take place? at the very period the nearest to that of their discharge, when all the bad lessons they have collected from one another, whatever they are, may be transferred from theory to practice.

* This is one mode of construction: is it the right one? I will not be positive: it would take an argument of an hour long to attempt to get to the bottom of this darkness. Here is the clause, in its own words, that I may be sure of not doing it an injustice:—"And in case of removal into any prior class, the offender shall, from the time of making such order of removal, go through such prior class, and also the subsequent class or classes, in the same *manner* as under his or her original commitment, *and* for such *additional* time as such committee shall think proper to order, so as the whole time of confinement, to be computed from such order of removal into such prior class to the final discharge of the offender, shall not exceed the original term for which he or she was committed."

Does the word *manner* include the consideration of *time?* It should seem yes. It surely might, if nothing else were said about time. *Additional* with relation to what? additional with relation to the longer time they would have to stay in consequence of their being *turned down* into a lower *class*, supposing nothing expressly said of time? or merely additional with relation to the *original* time specified in the *sentence?* In the latter case, the sense would have been more clearly expressed by leaving out the word *additional*, or the word *and*, or both of them:—*in the same manner .... and for such time as the committee shall .... order — in the same manner .... for such additional time — in the same manner ... for such time.*—In any of these three ways, the expression would have been clear on the side of lenity, proportionality, and reason. If neither the word *and*, nor the word *additional*, were designed to ensure the contrary construction, no effect at all is given them, and they serve only to perplex. Thus then stands the question: the letter of the law pretty decidedly on one side; reason, as I conceive it, on the other: but what sort of a guide would reason be to trust to throughout this law?

Thus much is certain: that a cruel, or what is more to be feared, an interested committee-man, leagued and connected with the governor, might, without the smallest risk or even imputation, take the rigorous side; and what is remarkable, the abuse would not in any possible way be susceptible of a remedy. Convened before the Court of King's Bench, what possible fault could be found with a committee-man who had been in the constant habit of sentencing no prisoner for less than two years? "How came you, for so slight an offence, to inflict imprisonment for so long a term?" "Because I found myself obliged: the law is peremptory: it does not admit of a shorter." "No; you mistake; you were not bound." "Well, if I was not bound, I am sorry for it: but I have done no wrong; for I thought I was, and you cannot deny that I was empowered." Had the discretion given not extended to so long a period, the stretch, if the construction authorizing it were not approved of, would have been chargeable with illegality, and there would have been something to have appealed from. Here, as there is no pretence for a charge of illegality, there is no ground upon which an appeal can build itself.

To form a just conception of this clause, and of the spirit which pervades this act, add to the mischiefs of a plan bad in principle, the mischiefs of perplexity and ambiguity resulting from complication. O simplicity! heaven-born simplicity! when wilt thou visit the paths of law?

for the management contract, I would make no inconsiderable allowance for such a clause, especially so worded: I mean, if I could bring my conscience to such a degree of relaxation, that the idea of taking a sentence of imprisonment for a few years, and altering it under the rose into a punishment for life, sat as easy upon me, as that of a similar transformation appears to have sitten, I hope through inadvertence, upon the planners of the colonization scheme.

The mischief roll is not yet read through. The proportion of punishment, such as it is, what does it depend upon?—upon the degree of delinquency which called for it? No—not in any shape. The punishment is proportioned, not to the magnitude of the offence, but to the length of a man's term: not to the offence for which he is punished, but to another offence which has nothing to do with it, and which has already had its punishment.

That *punishment* is the only use this classification is put to in the act itself, is certain. But was it really designed for an engine of punishment, and nothing else? If so, the awkwardness of it is not less remarkable than the expensiveness. Three equal periods of a man's term, three years say, is the time it is supposed to be wanted for. For one of those periods it can't be used; since for such time as a man is in this "*first*" class, as it is called, meaning the lowest, there is no lower class into which he can be turned down. What is this period during which it can't be used? The very period, of all others, during which, if in any, it would be wanted. When is it that punishment in every shape is in most demand?—when is it that unruliness is most to be apprehended, and requires the greatest force to combat it? One would think it were when coercion was most new. A bit for breaking in horses, which has this peculiar property belonging to it, that it can't be used till the horse has gone a twelvemonth upon the road! an engine that cost £11,700, and that can never be used till experience has shown that there is no need of it!

Was the sinecure establishment that we have seen grafted on this classification plan, meant as a fund of *reward?* It is still worse contrived for reward than the engine of punishment made out of the classes is for punishment: that cannot be used till one-third of the term is over; this, not till two-thirds are at an end.

One glance more, and I have done. Two divisions or classifications, the reader may have observed, running on together: two classifications made upon so many different principles: the first grounded on capacity for hard labour, as indicated by age, sex, health, and ability: the other on length of standing; that is, not on *absolute* length of standing, but *relative*—relation had to the proportion elapsed of each man's term. If this account be obscure, I am sorry for it, but I cannot help it: were it altogether otherwise, it would not be a faithful one. These divisions cross and jostle one another in effect; but in idea each may be considered by itself. Let us observe for a moment the consequence of the first of them. Two classes of persons are carefully distinguished, and placed in situations as opposite as possible: from that moment, their treatment, as to everything that remains of it, is uniformly the same. Two sets of people, and but two: to heave at a capstern, or what is looked upon as equivalent, the employment of the one; to knit nets, or some such thing, the occupation of the other. No medium: straining to excess, or sitting almost without motion. The labour of the former might be too severe; that of the latter not sufficiently so. Preservatives require to be employed against both excesses: clauses to restrain undue severity in the one case, clauses to restrain undue lenity in the other. What does our legislator? He twists both kinds of clauses together, and applies them indiscriminately to both classes of workmen, and both classes of work. What is the consequence? Every such clause is a two-edged sword: with one edge it destroys one part of the company; with the other edge, the remainder. With the one he thus cuts up one half of his own purposes; with the other, the other half. Because 14 or 15 hours would be too long for one set to heave at a capstern, the others, who are to do nothing but sit and knit, are not to have any more than 10, than 9, than 8 hours, to do that in, or anything else: because three or four hours would be nothing to employ in knitting, those who are to heave at a capstern are to heave on for not less than 8, 9, or 10 hours, and longest when the heat of the weather has rendered the fatigue most intolerable: because those who are to sit knitting would soon be dead were they to do nothing but sit or lie a-bed without exercise, the capstern-heavers, who have been heaving and straddling till they cannot set one foot before the other, are also to have their walk: because the capstern-heavers will be dead with fatigue before their day is half spent, the knitters are to have 14 hours out of the 24, and never less than 12, to soak in bed; and this is called keeping them to hard labour: because the capstern-heavers will be worked to death before their term is one third over, the knitters, by the time they have gone through a third of theirs, are to have a part of their knitting hours struck off; and by the time they have gone through two thirds, the abatement is to be doubled.

"Exaggeration! exaggeration! Can you seriously, then, pretend to believe that mischiefs like these would really ensue?"—I

hope not — I trust not; at least, not in any such degree: in some way or other, the worst of them would be got rid of. These, like others, would somehow or other find something like a remedy. True: but who should we have to thank for it? — those who contrived the act? No, but those who would have to execute it; that is, to struggle under it, and save themselves from executing it. Of two things, one: executed, it is ruinous; not executed, it is useless: such is the dilemma that pursues it through every part of its career. The provisions either will, or will not, have the effect of peremptory ones. In the one case, they are productive of the mischief which we see: in the other, they are of no effect against the mischiefs which they themselves have in view.

Recapitulation. — Errors collected under the single head of *Employment* — fruits of legislative interference in matters of domestic and mercantile economy.

1. Setting out with a wrong *object* — *hard labour* instead of *profit*.

2. Undertaking to give any *regulations* or *instructions* at all with regard to *choice* among the species of employment.

3. Grounding the choice upon a *wrong principle* — employing human exertion to generate pure force.

4. Making peculiarly *disadvantageous applications* of that disadvantageous principle — capstern-work put upon a line with wheel-work.

5. Prescribing other *employments particularly disadvantageous* upon the face of them; such as beating hemp, rasping logwood, chopping rags — operations already performed to more advantage by machines moved by the elementary *primum-mobiles*.

6. Putting a negative upon *mixture of employments*, though alike recommended by health, economy, and comfort.

7. Putting a negative upon a free *change* of employments, as economy may occasionally require.

8. Limiting the quantity of labour, either one way or other, in point of *time: working-hours* not fewer than 8, 9, or 10 in a day, nor more.

9. Making the limitation different in different *seasons:* 10 hours for seven months, 9 for two other months, and 8 only for the remaining three; thence losing so much in the two latter seasons.

10. Making the limitation such, that the exercise shall be *hardest* in the season when men are *least able to bear it*.

11. Making further deduction from the sum of labour on the ground of *length* of *standing:* striking off so much when one third of the term is over, and so much more when two thirds, with or with out limiting the amount of the deduction, or specifying the mode.

12. Making the deductions *per saltum:* two degrees only of relaxation, two classes only of prisoners, to the disregard of the numerous differences indicated by the circumstances of individuals.

13. Facilitating undue preferences: — by the power given of changing the work from real to nominal.

14. Authorising excessive additions to the duration of punishment, by a judicature secret and arbitrary, and liable to be interested.

15. Establishing an *expensive fund* of reward and punishment; and that so constituted, that it can never be used till the inutility of it has been demonstrated by experience: degradations and indulgences that cannot take place till one third or two thirds of a man's time is over.

16. Prescribing, under the common notion of hard labour, two classes of employments as *opposite* in point of severity of exercise, as possible, without any medium.

17. Prescribing for such opposite measures of exertion, the same measure of *relaxation;* and that in every particular — hours, seasons, and length of standing.

SECTION VI.

DIET.

ON the important head of diet, the principles already established leave little here to add.

1. Quantity—unlimited;* that is, as much as each man chooses to eat.

2. Price — the cheapest.†

3. Savour — the least palatable of any in common use.‡

4. Mixture — none.

5. Change — none, unless for cheapness.

6. Drink — water.

7. Liberty to any man to purchase more palatable diet out of his share of earnings.||

8. Fermented liquors excepted, which, even small beer, ought never to be allowed on any terms.§

* Rule of lenity, see Section 1.

† Rule of economy. ‡ Rule of severity.

|| *Rule of economy.* — Few cases, I believe, there are, if any, in which it will not be found advantageous, even in point of economy, to allow a man, in the way of reward, a proportion of his earnings. But *reward* must assume the shape of a present gratification, and that too of the sensual class, or, in the eyes of perhaps the major part of such a company, it can scarcely be expected to have any value; and if it take a sensual shape, it cannot take a more unexceptionable one.

§ *Rule of severity.* — How many thousands of the honest and industrious poor are incapable, unless at the expense of food and nourishment, of giving themselves this unnecessary indulgence! The mischief done to health by the use or abuse of fermented liquors is beyond comparison greater than that effected by all other causes put

Thus speak our three rules. Look round among the systems in practice: we shall find them all three transgressed, and what is more, the opposite excesses united in one and the same transgression. Many different dietaries have been adopted, prescribed, or recommended. These opposite defects may be observed more or less in all of them. In all of them, the food is limited in quantity: in all of them, it is more or less too good in quality. At Wymondham, three different sorts of things in turn, but of the only one of which the quantity is specified, viz. bread, a deplorably scanty measure. Thus far, however, right, as, except one meal in the week, animal food forms no part of it.*

Twopenny worth of bread only for a whole day! and this under the hardest as well as the easiest work! Twopenny worth of bread? Many a man will eat as much with his meat at a single meal. The allowance settled, too, not by quantity but by value! If thus scanty when at the largest rate, what must it be when one third of it is struck off? Under a regimen like this, a prison must be a scene of perpetual famine. I read it in the dietary: Howard read it in men's countenances. "Several young men," says he, (his visit was in 1788†) "seemed as if they could not go out so fit for labour as they come in." *Nobody*, it is said, *dies there*. I believe it—they do not stay there long enough: but there are slow poisons as well as quick ones. *Nobody*, it is added, *is sick there*. I deny it: everybody is sick there, and always. Is not a perpetual gnawing in the stomach a disease? Work little or much, behave well or ill, this is to be their fate. Were I to put a man to such a regimen, which as a necessary means to a fit end I should not scruple, I should speak honestly, and call it *torture*—I should use it instead of a thumb-screw: it is applying the rack to the inside of the stomach, instead of the outside of a limb. *Men that have once been there, do not come there a second time.* I dare say they don't; nor would they, were their allowance thrice as great as it is. It is said, *the profits of the work are more than double the expense of this maintenance.* I dare say they are. Why?—because the maintenance is less than half what is sufficient.‡

The good Howard, who with me protests against this dietary, has given us one of his own: and in this, as in so many other instances, has shown how little self was in his thoughts. Good things, a variety of them, and butcher's meat amongst the rest.‖ Butcher's meat twice, or rather four times a-week, to felons whose diet is to be their punishment! Butcher's meat for the lowest vulgar, as if for fear a cheaper diet should not agree with them! He himself all this while never suffering a morsel to enter within his lips. Yet what man ever enjoyed a more uninterrupted flow of health and spirits?

This inconsistency, in a word, runs through all the dietaries I have ever met with. Nobody has ever had the courage to be either cruel enough to feed felons as so many honest men would be glad to be fed, or extravagant enough to give them as much of the poorest food as they require. The simplest course, one would think, was doomed to be always the last thought of.

I look at the *hulk* dietaries; and in these, animal food abounds more than in any other. This is not difficult to be accounted for. The prisons are ships—the guards seamen: it must

together. The use is in fact none at all, where habit is out of the question. It would be next to impossible to tolerate a moderate enjoyment without admitting excess. The same beverage that produces no sensible effect on one man will overcome another. Even small beer ought not to be excluded from the general proscription; for there can be no commonly practicable test for distinguishing small from strong; and I have known constitutions to which even ordinary small beer has afforded the means of intoxication.

* WYMONDHAM DIETARY—TWO MEALS.

Breakfast.—A penny loaf every day.

Dinner.—Ditto two days, potatoes two days, boiled pease two days, ox-cheek soup one day.

† September 12.—On *Lazarettos*, p. 152.

‡ God forbid what is here said should be the means of throwing anything like odium on the labours of the respectable magistrate to whom the public is indebted for this regimen and the account we have of it. Of the purity of his intentions, malice itself could not suggest a doubt: of his having conscience on his side, he has given the most unquestionable proof that man can give; for it is he himself who publishes his plan, and calls upon the world to judge of it. Seeing that economy was the point at which the penitentiary system stuck, it was his zeal for the system that carried him these lengths to serve it. Is this serving it as it ought to be served? that is the question. It is an honest difference between us, and I hope not an irreconcileable one. But while my opinions on this head remain as they are, I cannot help regretting, for the sake of the prisoners, that some contracting Jew had not had the management of the prison. The most rapacious of the tribe would not have dared to go such lengths on the side of parsimony, as this gentleman has gone from the purest motives: if he had, instead of proclaiming it and calling for imitation, he would have been as anxious to conceal it as if he had stolen what he saved.

‖ HOWARD'S DIETARY.—Good wheaten bread, 1½ lb. daily; viz. ½ lb. at breakfast, and 1 lb. at dinner.

Breakfast.—Every day ¼ of a pint of wheaten or barley meal, oatmeal, or rice made into soup.

Dinner.—*Sunday* and *Thursday*, 1 lb. of beef, mutton, or pork, without bone.—*Monday* and *Friday*, A pint of pease boiled in the broth of the preceding day.—*Tuesday*, Half a pint of wheat or wheat flour made into pudding or soup.—*Wednesday*, 2 lb. of potatoes, turnips, carrots, or other vegetables that are in season.—*Saturday*, ¼ lb. of cheese, or the vegetables as on Wednesday.—On *Lazarettos*, p. 238.

be seaman's provender. What was the custom at sea, would of course be kept in view, not what was the custom elsewhere, where men are kept cheaper; much less, what are the demands of nature. Neighbour's fare could not well be denied; especially when such a price was paid for it. Howard, too, had been there, and grumbled: and there were those who had the fear of Howard before their eyes. The powers above were doubtless told, that all this good living was well paid for in work: men who work hard must be well fed; and when men are well fed, those who feed them must be well paid for it. What has not been said, I suppose, to the powers above, is however most true, that what is paid for thus working men and feeding them, over and above what need be paid, is more than even the pretended value of their work.

Turn now to the penitentiary act. Another visit to the kitchen, and as much got by it as before. By § 35, every offender is to be "sustained with bread and any coarse meat or other inferior food, and water or small beer."

For humanity, for health, for comfort, what does this do? Nothing. In what respect can the prisoners be the better for this article? In none. What says it? That the food shall be sufficient? No. That it shall be wholesome? No; not so much even as that. What then?—that bread shall form a part of it. They are to have—what? bread and something besides. What is that something to be? is it to be meat, at all events? No: but either meat, so as it be coarse, or any thing else whatever, so as it be of an inferior kind. Inferior to what? *That* the statute has not told us, and it would have been rather difficult for it to have told us.

For economy, what does it? Nothing.—Does it set up any sort of barrier against unthriftiness or waste? May not meat, though coarse, be unthrifty food, if furnished in an unnecessary quantity, or laid in upon unthrifty terms? Might not their caterer cram them with Polignac rolls, for anything there is in the act to hinder him?

It does worse than nothing. One thing it does determine: bread they must have—bread for ever, and at all events. Why always and at all events bread? Is it that bread is always the cheapest of all food? By no means. Whether it be so at any time, it is not necessary to inquire: it is sufficient that it is not always. Bread is a manufacture. Does not the earth afford substances that will serve for food—that are actually made to serve for food, with less expense of manufacture? Is bread anywhere a necessary article? Is it so much as universal amongst ourselves? Are there are not hundreds of thousands, nay millions, of honest men in the three kingdoms, to whom the very taste of it is unknown? Is not Ireland fed with potatoes? Is not Scotland fed with oatmeal? Is that inferior grain so much as manufactured into bread? Are Irishmen a puny race? Is the arm of the Highlander found weak in war?—What a lesson to hold out to so large a portion of the people!—that the food they are content with, the best their country can afford them, is not good enough for felons!*

For what purpose, then, can this regulation serve?—for what could it have been meant to serve? For guidance?—for instruction? Did it need the united power and wisdom of King, Lords, and Commons, to inform us that there are things which may be eaten with bread, and that meat is one of them? Almost equally useless is that part which prescribes the drink, though not equally pernicious. They are to have—what? Either water or small beer. If the being confined to water is an undue hardship, what does this clause to save them from it? If it is not an undue hardship, why expose the public to be put to the expense so much as of small beer? In what respect is the regulation of the smallest use to them? Though they were to have beer given to them, is there anything in the act to prevent its being sour or musty?

For what use, then, this regulation about diet, when profusion is left without bounds, and when the prisoners may be starved or poisoned for anything that it does to save them? Ask of what disservice: the answer is plain, and not to be contradicted. It prevents them from being fed so cheaply as otherwise, without any prejudice to health, they might be. In this important article good economy and this act cannot exist together.

Ask my contractor, and after a year or two's trial he will tell you distinctly how many thousands the nation would have had to pay for this excursion into the kitchen. The world, you will find, might be sailed round and round for a small part of the expense.

Vain would it be to say, "So long as you give them bread, though it be but a morsel, you may compose the bulk of their food of whatever is cheaper, without violating the letter of the law." Certainly: but could you

* Not only bread is to be given at all events in ordinary, but even where an inferior diet is prescribed to be given for punishment's sake, still it is to consist of bread. Guilt upon guilt, and the most guilty among the guilty are never to be sunk so low in this school of rigid discipline, as to be no higher than upon a par with liberty and innocence.

Even lenity itself, were that the only consideration, would afford an objection against the fixing upon bread as a necessary article. Bread being a sort of food which is commonly eaten with meat, and with which meat is commonly eaten, the giving it without its usual accompaniment would naturally make the privation the more sensible.

without violating the spirit? without departing from what it was evident the authors had in view? Is not the article of bread put foremost? Is it not evident that, according to the notion and intention of those who drew this clause, bread was to compose the principal part of the men's food? But suppose the clause not obligatory — what would it then be? Nugatory. Here, as before — mischief, or nothing — such is the alternative.

Turn them over to a contractor, and observe how different the result. No need to rack invention to prevent his spending too much upon their food. Leave it to him, and one thing you may be sure of, that in this way, as in all others, as little will be spent upon them as possible.

The only thing to fear in this case is, lest he should not bestow as much upon them as he ought. But against this you have your remedy. Do what the penitentiary act has not done: require that the food shall be wholesome, and that there shall be enough of it. This is something. It is such ground as not only popular censure, but a legal indictment, may be built upon. Is it not yet enough? Say that, punishment apart, he shall feed them to the extent of their desires. Will he still fail you? Hardly. Even upon the plan of the present penitentiary act, some eyes, upon the Panopticon plan all eyes, are on him. The latitude thus given him, with regard to the cnoice of the food, which of course will be of the cheapest sort, is even of service to his integrity, and to the comfort of the prisoners in this respect, by the jealousy it excites. Whatever he does in this way is his own doing — the result of a motive, of which the force is known to every one, and regarded with a suspicion which is as universal as it is reasonable. It is his own doing, and seen by everybody to be so. No pretence of public good — no letter of any law to afford shelter to inhumanity or avarice.

SECTION VII.

CLOTHING.

A FEW words under the head of clothing, and but few.

Health, comfort, and decency, prescribe the limits on one side: economy on the other. Fashion, the supreme arbiter everywhere else, the cottage not excepted, has no jurisdiction here.

The penitentiary act points out two other objects as proper to be kept in view: humiliation, and safe custody. So much for generals: happily, under this head, it keeps clear of specifications.

Two hints I will venture to offer to my contractor in this view: —

I. For men, coat and shirt-sleeves of unequal length: the left as usual—the right no longer than that of a woman's gown.

Economy is served by this contrivance in a small degree: safe custody in a greater. The difference of appearance in the skin of the two arms will be an essential mark. In point of duration, nothing can be more happily suited to the purpose; it is a permanent distinction, without being a perpetual stigma.

Exclusive of this pledge, I look upon escape out of a Panopticon—I have said so over and over — as an event morally impossible. But suppose it otherwise: how great the additional security which an expedient thus simple would afford!

A man escapes. Minute personal description, *signalement*, as the French call it, is almost needless: one simple trait fixes him beyond possibility of mistake. His two arms wear a different appearance: one, like other men's — the other, red and rough, like that of a female of the working-class. No innocent man can be arrested by mistake. He bares his two arms: — " Observe they are alike; I am not the man — you see it is impossible."

The common expedient is, one sleeve of a different colour. This costs something — it saves nothing; and when the coat is off, the security is gone.

Hardship there can be none: the tenderer sex, even in its tenderest and most elevated classes, has both arms bare. Among the Romans, even the most luxurious and effeminate, not the fore-arm only, but the whole arm, was bare, up to the very shoulder.

II. In both sexes, on working days, shoes wooden; stockings, none: on Sundays, stockings and slippers.

Shoes wooden, for several reasons:—

1. They are cheaper than leather.

2. Among the common people in England, they are known as a sort of emblem of servitude.

3. By the noise they make on the iron bars, of which the floors of the cell-galleries are composed, they give notice whenever a prisoner is on the march. Putting them off, in order to prevent this, and escape observation, is an act which, if forbidden, will not be practised, where non-discovery will be so perfectly hopeless. Besides that the bars would give pain to bare feet not accustomed to tread on them.

4. Were the prisoners to go bare-foot, the bars which form the floor of the galleries must be so much the closer, consequently the more numerous and expensive.

5. In climbing, with a view to escape, it would be impossible to make use of the feet, either with the wooden shoes on, or with naked feet kept tender by the use of shoes. Common leather shoes, especially when stout and coarse, are of great assistance in climbing.

and bare feet, hardened by treading on iron and on the bare ground, might find no great difficulty. Bare feet, that were accustomed to shoes, would serve as indifferently for running as for climbing; and a fugitive would hardly carry about with him so palpable a mark of his condition as a pair of wooden shoes.

Neither in this privation, fashion apart, is there any real hardship. Not to mention antiquity, or foreign nations, in Ireland, shoes and stockings are rare among the common people in the country.* In Scotland, these habiliments are not generally worn by servant-maids, even in creditable families.

It is on account of fashion, and the notions of decorum dependent on fashion, and to avoid giving disgust to the chapel-visitors, that I propose stockings and slippers for Sundays. Slippers in preference to shoes, as helping to keep up the distinction, and being less expensive. Slippers, according to our customs, suit very well the condition of those who it is not intended should ever be absent from home. But in the East, they are worn at all times in preference to shoes.

As to the rest, see the title of *Health and Cleanliness.*

SECTION VIII.

BEDDING.

A WORD or two, merely to set the manager at liberty on the article of *bedding.* More unlegislative minuteness — more unthrifty fixation. Each prisoner is to have a bedstead; that bedstead is to be iron; the sheets are to be one or more; they are to be hempen; there is to be a coverlet; there are to be blankets; there are to be two or more of them, and they are to be coarse. Why a bedstead at all events, and that of iron, by act of parliament? Not that there is any harm in giving prisoners iron bedsteads: it is what I might, for aught I know, give them myself, if it depended upon me. Here, again, what is the object?—comfort, or economy? The former gains nothing, and the latter suffers by it. Spite of the act, your bedstead, though of iron, may be so dear as to be an unfrugal one, or so scanty as to be an uncomfortable one. Procrustes, were he manager, would find nothing in it against his bed. Is it that iron is the cheapest material for bedsteads? A contractor, then, had it been left to him, would have employed it. But it is not cheaper: a wooden one of the same size may be had for less money; and a bedstead, even a wooden one, will last for ages.†

But why force bedsteads upon the manager at all? Is it so certain that they will be preferable to hammocks? Is it so certain that they will be cheaper? Will they be warmer? Will they require less bedding? Will they take up so much less room? Is there anything in hammocks inconsistent with good health? Had the immortal crews of the Resolution and Adventure anything else to lie on? Can hammocks, any more than iron bedsteads, harbour bugs?

Why *matting?* Is it that you are afraid of their having feather-beds? My contractor would ease you of your fears. Why matting, and not *straw?*‡ Matting is not so favourable to cleanliness as straw. Matting, being a manufacture, costs something to make, and cannot be shifted every week or fortnight, on account of the expense: straw might; the more easily, because, having performed this service, it might be applied to other uses with little loss of value.

Sheets, why hempen at all events? If flaxen be cheaper, why have hempen ones? If dearer, what fear is there that the governor, if he undertook the business by contract, would allow them?

Blankets, too — to what end speak of blankets and coverlets, and enact that the blankets shall be "coarse," leaving the coverlet to be of eider-down? Peculation or extravagance might give each man blankets by dozens, and those of beaver or vigogna wool, for anything there is here to prevent it: avarice might starve him with a worn-out linen coverlet, two thread-bare blankets, and those not worth picking off a dunghill.‖

SECTION IX.

HEALTH AND CLEANLINESS.

HINTS relative to this subject are not noble

* Young's Ireland, p. 121.

† Bugs, it is true, may lodge in wooden bedsteads. This is a very good reason for preferring iron ones for hospitals. But there the case is different in a thousand respects. Comfort is the great object there: by discomfort and want of rest, even a bug bite may be productive of serious consequences. In hospitals, the introduction of such vermin is facilitated by the promiscuous access incident to a frequent change of inhabitants, and to a state of freedom: discipline, in this as in other points, cannot be enforced with equal rigour or facility.

‡ To inclose the straw, as Howard says, there should be a sack, for several reasons.

‖ If you must regulate, do what for the hulks the act has not done, and save men from the incommodious and indelicate necessity of lying two in a bed. On board the hulks, this was (and I suppose is) the case, as the evidence the authors of this act had before them declares.

The single sheet the act allows of is an awkward and uncomfortable contrivance. A sack, with a flap under the chin, would take less stuff, and be more comfortable.

This, let it be observed, is in a note, and not in an act of parliament.

in themselves; but they are ennobled by the end.

1. No blowing of noses but with a handkerchief.

2. No spitting, but in a handkerchief or spitting-box.

3. No tobacco in any shape.

4. Washing of hands and face at rising and going to bed.

5. Washing of hands immediately before and after each meal.

6. Washing of feet at going to bed.

7. Hair of the head to be shaved or cropt: if shaved, to be kept clean by washing; if cropt, by brushing.

8. Bathing to be regularly performed: in summer once a-week; in spring and autumn once a-fortnight; in winter once a-month.*

9. Shirts clean twice a-week.

10. Breeches washed once a-week: coats and waistcoats once a-month in summer; once in six weeks in spring and autumn; and once in winter: sheets, once a-month: blankets, once in summer.

11. Clothes all white, and undyed: by this means they can contract no impurity which does not show itself.

Observations.—Much of the regimen on this head must of course be arbitrary: it may be tightened by some—it may be relaxed by others, and yet nobody to blame.

Nothing like all this nicety with regard to cleanliness can be necessary to health: in some points, it is more than is practised by persons of the highest stations and of the greatest delicacy. But the great use of it is to ensure success to the plan of chapel-visitation, in which view it is absolutely necessary to prevent everything that can give disgust to any of the senses. To get a bow straight, bend it, says the proverb, the opposite way.

This part of the regimen has even a higher object. Between physical and moral delicacy, a connexion has been observed, which, though formed by the imagination, is far from being imaginary. Howard and others have remarked it. It is an antidote against sloth, and keeps alive the idea of decent restraint, and the habit of circumspection. Moral purity and physical are spoken of in the same language: scarce can you inculcate or commend the one, but some share of the approbation reflects itself upon the other. In minds in which the least grain of Christianity has been planted, this association can scarce fail of having taken root: scarce a page of scripture but recalls it. Washing is a holy rite: those who dispute its spiritual efficacy, will not deny its physical use. The ablution is typical: may it be prophetic!—Alas! were it but as easy to wash away moral as corporeal foulness!

Here might regulation range, and economy receive no disturbance. *Accordingly*......shall I say?—No: I will not be spiteful:—but however, so it is, the penitentiary act is silent.

On reception in particular, thorough cleansing in a warm bath—thorough visitation by the surgeon. This in a *reception-house* without the building. Clothing new from top to toe—the old thoroughly scoured or condemned. Ablution—regeneration—solemnity—ceremony—form of prayer:—the occasion would be impressive. Grave music, if the establishment furnished it; psalmody at least, with the organ. To minds like these (to look no farther,) what preaching comparable to that which addresses itself to sense?

SECTION X.

OF AIRING AND EXERCISE.

The use of airing is to serve as a preservative to health.

Literally taken, it means nothing but exposure to the air. But under the notion of airing is tacitly included that of exercise. As a means to the above end, either would be incomplete without the other.

In the choice of a plan of airing for a penitentiary-house, and in particular for a Panopticon penitentiary-house, the following are the qualities that appear to be particularly desirable:—

1. That it be sufficient for the purpose of health, for the sake of which it is instituted.

2. That it be subject to the inviolable law of inspection.

3. That it be not incompatible with the degree of seclusion pitched upon.

4. That it be capable of being applied regularly and without interruption.

5. That it be favourable to economy, viz. either by being productive of a profit, or at least of being applied with as little expense and consumption of time as may be, on all days except those in which religion is understood to put a negative upon that worldly consideration.†

Walking in a wheel is a species of exercise that fulfils to perfection every one of the above conditions.

* In cold weather, immediately before the summons to the wheel would be the best time. The warmth lost in the former operation would thus be restored with interest by the latter.

† In the Wymondham penitentiary-house, the place allowed, the only one that can be allowed, for airing, is the inclosed quadrangle within the building, an area of about 70 to 80 feet. In this the air is taken—by whom? by all the prisoners? No: but by "*some*" only. And by those how? regularly? No: but "*occasionally.*" Why by some only, and by those only ocasionally? Does the necessity of air and exercise to health and life come at odd times, and vary with the degrees or fancied degrees of guilt?

1. It does every thing that can be wished for with regard to health. You may give a man as much or as little of it as you please. It is but a particular mode of walking up hill. A lazy prisoner cannot cheat you. The turns may be numbered—there are known contrivances for that purpose. A partial or tyrannical inspector cannot assign to a prisoner too little of this exercise, or too much. The effect is produced by the mere weight of the body successively applied to different points. Exertion cannot be shrunk from by one man, or exacted beyond measure from another. The exercise is the same, or nearly the same, for one man as another: for a heavy man as for a light one.

2. That it is capable of exposure to inspection, is evident enough. It is scarce necessary to observe that the axis of the wheel should be placed in a line not widely deviating from a right line drawn from it to the inspector's eye, when stationed in the *look-out* or *exterior lodge*.

3. It is not incompatible with the strictest plan of seclusion: not even with absolute solitude. Whatever persons are companions in a cell, the same persons and no others may be companions in a wheel. The different parties may relieve one another in the way that will be pointed out presently, without any opportunity of converse.

It is beyond comparison more compatible with seclusion, and even with solitude, than ordinary walking. Requiring more exertion, a given quantity of it will go much farther, and is performed without change of place. It is walking up a hill, and that a pretty steep one.

4. It need not suffer any interruption whatsoever: not even in the worst of weather. To each airing-wheel there is an *awning*, to be used only in bad weather, supported by a few slight iron pillars, and composed of canvass, or whatever else is cheapest. It is provided with side-flaps all round: such of them only as are necessary to keep out the weather are let down; that side alone excepted which is towards the inspector, and which, if let down, would impede his view. To extend the protection to this open side, the aperture is covered by a short projection like a *porch*.

5. It is not only favourable to economy, but the only operation ever thought of in this view that is so. It is all profit; and this profit is obtained without any sacrifice. It is not in the smallest degree the less healthful for the profit which it brings: walking up hill is not at all a worse exercise, though it will go farther, than walking on plain ground. Health and economy are not upon such bad terms as the authoritative plans of penitentiary management seem to suppose: an operation is not unfitted for the one purpose, merely by being made subservient to the other. No other of the modes as yet proposed of applying forced labour is equally advantageous, or equally unobnoxious to abuse. Heaving at a capstern, the exercise placed on a line with it by the penitentiary act, bears, as we have already seen, no comparison with it.

6. This exercise, it may be observed, is applicable with equal propriety to both sexes. What should hinder the setting a woman to walk up a hill, any more than a man? But who could think of setting the weaker and softer sex to strain and struggle at a capstern?

To attempt to determine what are the most advantageous applications of all that could be made of the power thus acquired, would be equally useless and impracticable. It may be applied to any purpose whatsoever, that the form of the building or the dimensions of the outlets do not exclude. Every one who is at all conversant with the principles of mechanics knows, that when you have obtained anyhow a given quantity of power, the direction that may be given to it, and the uses it may be applied to, are at your command. If your trade requires it, you may have a perpetual motion if you please. You may do what the penitentiary act advised you—*saw stone, polish marble, beat hemp, rasp logwood*, or *chop rags*. You may do a thousand things besides; and amongst the thousand, a thousand to five, some that will be more profitable than those. Having it in this case cheaper than you can employ even the powers of nature—having it in short for nothing, you may apply it with advantage, in every instance where there is advantage to be made by dividing labour, in such a manner as to commit the production of the force and the direction of it to different hands.

One indispensable demand there is for it, and but one—the raising water for the supply of the establishment: and health will thus receive a double sacrifice. But for this purpose a small part of the quantity of this sort of labour requisite for airing and exercise will be sufficient: the rest will remain free to be dedicated to economy, in whatever may be its most productive shape.

What is the proportion of *time* that ought to be allotted to this part of the discipline? The quantity, it is evident, will admit of very considerable variation. It will be less fatiguing, without being less conducive to health, if performed at twice rather than once, and divided between distant parts of the day. Less than a quarter of an hour each time will hardly answer any purpose; but that time may be doubled, trebled, quadrupled, if economy should require it. Happily the human frame allows of a considerable latitude in this as well as in most other parts of the dietetic regimen; nor therefore will it follow, that because half an hour spent in this way out of

four and twenty would be sufficient, a whole one, or even two whole ones, would be too much.

Under the notion of hard labour, the penitentiary act prescribes, as we have seen, eight hours of this exercise out of the four and twenty, at the time of the year when it is least fatiguing, and a quarter as much again when it is most so.

The different parties, I have said, or individuals, may relieve one another without opportunity of converse. On the striking of the clock, an inspector from his gallery opens the cell where the prisoner is whose turn it is to go into the wheel. He takes his course in the track already described.* Arrived at the door which leads to the wheel, by opening it he gives motion to a bell, at the sound of which, and not before, the prisoner who is walking in the wheel quits it and returns to his cell. Silence is enjoined to both parties by a general law. The shifting, being the work but of a moment, and then performed under an inspector's eye, can never, under these circumstances, afford room for a prohibited conversation of any continuance or effect. By the bell attached to the door that opens from the staircase upon the gallery adjoining to his cell, notice is given of the arrival of the returning prisoner to the inspector of his story, who immediately repairs to that spot in the inspection gallery which is opposite to the cell in question, and opens it, as before, to let in the returning prisoner, in the same manner that he who has just descended was let out. The inspector, having a less circle to move in, will naturally have reached his station before the prisoner has reached the corresponding one; but, should this not be the case, the prisoner is instructed to wait in the front of his own cell, without speaking or looking towards either of the adjacent ones. The same instruction is given with regard to every cell by which he has ocaasion to pass in his way down and up. And this instruction is not likely to be broke through, as, besides the general security for its observance afforded by the inspection principle, the inspector has, by the above-mentioned bell, received warning to observe.

Mode of Airing on the Parade. — Two inspectors, in the first place, repair from the lowest inspection-gallery by the line of communication to the look-out, taking with them fire-arms, with a proportionable supply of ammunition. In their way they carefully observe that the side doors opening into the parade in the yards from the covered-way through the prisoners' lanes, are locked. Notice being given to the inspectors within, that those in the look-out have taken their station, the prisoners are, in the way already described, let out of their cells. Arrived at the parade, they take their stations on the lines corresponding to their respective cells. They halt till it be seen that they have properly occupied their respective posts. Then, on a signal given from the look-out, the march begins.

To mark the time, and to preserve regularity the better, the assistance of martial music may be called in. Though the object be not military, there is nothing to hinder the copying in this respect the regularity of the military discipline. What are the institutions in which regularity may not have its use? By military arrangement, any number of persons may be kept together or asunder at pleasure, while in motion as well as while at rest. By military discipline, a large number may be kept virtually separated, though collected within a narrow space. At the time of exercise, what conversation can be carried on. even between next neighbours, though not a yard asunder? Even in the milder discipline of the school, if the master thinks proper to command silence, what conversation can be carried on within the circuit of his eye?

It is in this way that hundreds, as we have seen, may enjoy the benefit of air and exercise without the liberty of conversation, in a space which, without an arrangement of this sort, would not be sufficient to afford to three, no, nor to two, the same limited indulgence. In this way, the space absolutely necessary for the purpose may be determined to a foot square, and reduced to the smallest allowance possible.*

Thus much for airing, considered as conjoined with exercise. But too much care cannot be taken to profit by every opportunity that presents itself, of giving the prisoners the benefit of the salutary influence of the open air. The house which they inhabit is beyond example airy. True, but still it is a house. We shall come presently to the head of *schooling*. This exercise of the mind, though it cannot conveniently be conjoined with bodily exercise, may in fit weather be as well performed in the yard as in a confined air. It therefore ought to be, whenever the inclemency of the weather does not absolutely forbid it.

* Through the prisoners' staircase on that side, the grated passage, the prisoners' straits, the prisoners' rising-stairs, and the prisoners' lane, out of which a side-door opens, leading to the wheels. See Part I. § 10, 15, 16, 17, and 20.

* The expense of the music is scarce worth mentioning. On such simple instruments as a fife and drum, a very slight degree of instruction will be sufficient to the simple purpose of affording a measure to the time. That among such a multitude two or three persons susceptible of this degree of instruction should not be to be found, if not already possessed of it, is not to be supposed.

SECTION XI.

SCHOOLING AND SUNDAY EMPLOYMENT.

EVERY penitentiary-house, it is observed in the Letters, besides being a penitentiary-house, was liable to be an *hospital.* Every penitentiary-house — I might have added, every Panopticon penitentiary-house more particularly, might be, and ought to be a *school*—to children at any rate, since so it is, that even that tender age is not exempt either from the punishment, or from the guilt that leads to it; and why not for the illiterate at least among men? Not many surely will there be, even among the adult members of this community, whose education has been so complete as to have left them nothing to learn that could be of use either to their master or to themselves. To read, to write, and to cast accounts—such ordinary branches of instruction might be common to them all. Of such of them as possessed the seeds of any peculiar talent, the valuable qualities might be found out and cultivated. Drawing is of itself a lucrative branch of industry, and might be made assistant to several others. Music, here as elsewhere, might be made an assistant to the productive value of the chapel. If to a just comprehension of his own interest, the contractor should add a certain measure of spirit and intelligence, he will naturally be disposed to put them in possession, according to their several capacities, of every such profitable talent they can be made to acquire. Who can doubt of it?—their acquirements are his gains. Where is the academy of which the master has so strong or so immediate an interest in the proficiency of his pupils?

Instruction being to be administered, at what times of the week and of the day? Two words—*Sunday Schools*—resolve every difficulty. In them we see a vacant spot, nor that an inconsiderable one, of which instruction in its most respectable branches, intellectual as well as moral and religious, may take possession, without any opposition on the part of economy. Time was wanting for such employments; employments were wanting for this time: both demands are satisfied by a principle so happily established and approved.

Of what nature shall the employment be at those times? Let religion pronounce, the answer cannot be long to seek. Two modes of occupation present themselves: exercises of devotion; and lessons of instruction in such acquirements as are capable of being inlisted in the service of devotion. That the whole extent of the time could not be exclusively appropriated to the former purpose, is obvious enough: the very sentiment is more than will be to be found, until it be planted by instruction, in such corrupt and vacant minds. Paternosters in incessant repetition, with beads to number them, may fill up, if you insist upon it, the whole measure of the day: but the words, instead of being signs of pious thoughts, would be but so many empty sounds — and the beads without the words would be of equal efficacy.

I speak under correction: but for my own part, I must confess, that among arts capable of being employed in the service of religion, I see none that need be excluded, even on this consecrated day, so long as they are actually and faithfully occupied in that service. Among the most obvious are those already mentioned in a more general view, especially that branch of music which has received the name of *psalmody.* And if arts of a more refined and privileged texture, such as that of *design* in any of its numerous branches, could find admittance into so unpolished a society, why should they be excluded even on that day, so long as they wear the habit of the day?*

Mode of Airing and Exercising on Sundays. — To take their lessons they repair, when season and weather permit, to a kind of open amphitheatre in the airing-yard, of which, if necessary, there may be several, placed between the walks of the airing-parade—for which once more see the figure. The form of this erection is circular, with part of the circle cut off as by a secant, in which the instructor stations himself so as to have none of his pupils behind him, nor out of his view. Over the seats may be thrown occasionally a canvass awning, supported by iron pillars, with flaps to let down on the weather side, in case of violent wind or rain. If these flaps be not let down, or not let down on the side towards the look-out, the prisoners in their school are open to the eyes not only of the schoolmaster, but of the inspectors stationed in that exterior lodge. But at the worst, the vicinity of these armed protectors averts from the instructor every idea of danger.†

* Drawing, engraving, and colouring prints of Scripture scenes for editions of the Bible, the Book of Common Prayer, and other religious publications, furnish constant employment for a number of hands incomparably greater than could ever be picked out for such ingenious arts from a penitentiary-house. Reading and writing will, of course, on these days, take religious subjects for their theme; and these vulgar branches of instruction will find sufficient occupation for by far the greater part of the prisoners. But where these inferior sources have been exhausted, what scruple need there be of ascending to the other higher ones? The great object of this consecrated day is to keep alive the sentiment of religion in men's minds: what exercise, therefore, that contributes to that end can justly be deemed unseasonable?

† Were the roof a permanent one, a tiled roof for example, it might be difficult to find a situation where it could be placed without afford-

It is not a very slight degree of cold, nor a slight measure of bad weather, that should exclude them, on this only day out of seven, from the healthful influence of the open air. But in case of absolute necessity, the business of reformatory instruction may be transferred to the chapel, there to be carried on between or after the times of divine service.

Introduced into the middlemost inspection-gallery by the correspondent traversing-staircase, in the same order as into the airing-parade, and with similar precautions, they take their stations in the chapel-area and lower-gallery attached to it, two armed inspectors having first stationed themselves in the gallery above. Their station gained, the doors by which they have been discharged into it from the circumambient inspection-gallery are locked.* The schoolmaster may either occupy the clerk's place under the pulpit, or quit it and go round to them, according to the nature of the instruction to be conveyed.†

SECTION XII.

OF VENTILATION, SHADING, AND COOLING.

Of ventilation, considered as a part of the regimen, little need be said. In the cold season the process is carried on, and that in perfection, by the apparatus employed for warming: and even in warm weather, where no artificial heat is introduced, the same structure can scarce fail of ensuring the same effect. Were it otherwise, nothing more easy than to keep the windows open, especially on Sundays, and on week-days at airing times, when the prisoners are absent from their respective cells. In other prisons, comfort and health are at variance; and the preference given by uncultivated minds to present feelings over remote considerations, renders the enforcement of this part of the discipline more or less precarious. In a Panopticon, in this as in almost all other articles, transgression is impossible.‡

For *shading* in very hot weather, a strip of canvass to each window may be necessary in the greater part of the circuit.

Of the apparatus contrived for warming, a part might, if it were ever worth while, be made subservient to the opposite purpose. A cellar might occasionally be taken into the aëriduct spoken of in the section on *warming*, and in this cellar as in any other, there might be *ice*.‖

SECTION XIII.

DISTRIBUTION OF TIME.

Example for Working Days.

	Hours.
Meals (two in a day), ...	1½
Sleep, ...	7½
Airing and exercise in the wheel for those employed in sedentary work within doors, at two different times, in the whole, at least	1
Sedentary work, ...	14
	24

Example for Sundays and Church-Holidays.

Meals, ...	2
Sleep, ...	11
Morning service, ...	1
Evening service, ...	1
Schooling — including catechising and psalmody, ...	9
	24

Out of the time for sedentary work may be taken the small portion that will be necessary for the cleansing of the cells on ordinary days, and the more thorough cleansing to be given in the afternoon of Saturdays. As the cleansing could not so well be performed by candle-light, nor work done after the cleansing, whatever time remained after this latter operation might be bestowed on schooling. The time applied to the latter purpose would, of course, vary according to

ing obstruction in some way or other to the inspection principle.

* Should it be deemed necessary, Mr. Blackburne's mode of sedentary confinement might here be introduced; viz. that of letting down, upon the level of their breasts or stomachs as they sit, a BAR, which, without touching or much incommoding them, prevents their rising till it be removed. Mechanics and anatomy contributed each their share in the production of this simple and ingenious contrivance, which, however, amidst such an abundance of securities, will hardly be deemed a necessary one.

† For instance, reading and writing portions of Scripture or other devotional books. The profane and worldly-minded study of arithmetic might perhaps be looked upon as ill-suited to this consecrated place.

‡ In countries where the intensity of the cold renders men particularly averse to ventilation, deaths, as is observed by Howard from Russian documents, are much more frequent in the cold than in the hot season: a fact the more worthy of observation, as the former, naturally the healthier season, is not there attended with wet, nor subject to vicissitudes as here. In a Panopticon thus equally warmed and constantly ventilated, the season which would elsewhere be the least healthy, may be expected to be the most so.

‖ In a Lazaretto built on the Panopticon principle, as suggested in the Section on *Warming*, a provision of this sort would be not unsuitable, on the score of comfort. Whether on the score of economy, as a means of enabling work to go on at times when heat would not otherwise permit, any such thing could be made to answer, might not be altogether undeserving of consideration. The facility might depend in some measure on local circumstances.

the season; but in such variation there would be no inconvenience.

Is the time allowed for meals too little? Half an hour for breakfast, and an hour for dinner, is an allowance common among working people in a state of freedom. My boarders, let it be remembered, have not two courses and a dessert: my workmen have not to go to a distance for their repast. Is the number of meals in a day too small? It is twice as great as that in use among the people of antiquity: it is twice as great as that which satisfied Homer's kings.

Is the time allowed for sleep too little? Lord Coke does not allow his student so much by a third.* Did he mean to subject his pupil, the darling of his affection, a youth of birth and education, to hardships, and to hardships too severe to be imposed on felons? Lord Coke knew what a man engaged in sedentary occupations wanted; he spoke from experience. The condition of my felons is, in this respect, twice or thrice as eligible as that of many an honest servant at an inn.†

Are 14 hours out of 24 too many for even a sedentary trade? Not more than what I have seen gone through in health and cheerfulness in a workhouse by honest poor.

This sketch, let it be observed, is offered rather in the way of example, than in the shape of a peremptory rule. All I mean to represent as fixed, nor with that unrelenting rigour, is the time for meals and sleep: as to everything else, the proportions may be infinitely diversified, according to particular convenience.

Fifteen hours in the day employed in lucrative occupations: for, in this regimen, be it never forgotten, even the time found for health is not lost to industry.‡ Fifteen hours out of the twenty-four, without the smallest hardship, and that all the year round; not much less, as we have seen, than double the quantity thus employed in the establishments contrived at such an immense expense for the extraction of forced labour.

Let it not be forgotten, meal times are times of rest: feeding is recreation. Even change of work, especially if from gymnastic to sedentary, is repose, not to speak of recreation.

The four and twenty hours a field for discovery! could any one have thought it? Five, six, seven, precious hours, out of fifteen, thrown away as offal! Such is the account rendered by the authors of the penitentiary act, of the talents committed to their charge!

Seven hours taken from industry, taken even from health, yet not added even to comfort, not to mention an object so perfectly unthought of as the improvement of the mind.

I say, even from health. By the custom of sleeping, or what is still worse, of lying a-bed awake, to excess, the animal frame is relaxed, the spirits sunk, and the constitution debilitated and impaired; the habit of indolence is at the same time formed and riveted, and the texture of the mind vitiated along with that of the body. This a meliorative, a reformative regimen! I had almost called it a corruptive one. As soon would I turn Macbeth and murder sleep, as thus murder health by smothering it under a pillow.

Whence all this waste of health and time, one may almost say of good morals? Is it to save money? Is it that ingenuity has not yet found out an employment for candle-light that will pay the expense of candles? Those employments at least might be carried on by candle-light, and by very little candle-light, (knitting, for example) which are carried on without eyes. But if nothing in this way could be found for them that would fetch money, they should have light to learn to read, or to write, or even to sing by, rather than consume time and health in shaking or shivering in bed, comfortless and alone, to save consuming candles.

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* Sex horas somno: totidem des legibus æquis:
Quatuor orabis: des epulisque duas.
Quod superest ultra, sacris largire Camœnis.

† I happened once to fall into conversation upon this subject with a maid-servant at one of the London inns frequented by night-coaches. She went to bed once a-week at most, nor then slept longer than other people. The other nights all the sleep she had was two or three hours dosing in a chair. No ill health—no complaint of hardship. Such is the power of habit; and so moderate, in comparison of the demands of luxury, are the calls of nature.

Determined, however, on this point as on all others, to be on the safe side, and being assured by men of eminence in the profession, that if the general rule were adapted (as it certainly ought to be) to such constitutions as required the largest allowance, that allowance could not well be less than eight hours out of the twenty-four, such accordingly is the proportion I propose: taking only half an hour's sleep from each of the days of labour to add to that day of which the characteristic destination is to be a day of rest.

Bowing down to the law aphorism, *Peritis in suâ arte credendum est*, and preferring accordingly, on a question of this sort, the opinion of the father of physic to that of the father of English common law, I stand justified by the reverend sage himself, by whom that ancient maxim is adopted and recognised, and who, in the plan of dietetics above quoted, spoke, perhaps, rather as a poet than as a physician, and more from imagination than from experience.

‡ Nor need the portion, if any, which may be thought fit to be allowed to occupations of a literary nature, be all of it without an economical use. Such as could write well enough might copy for hire; at least they might copy the accounts and other papers relative to the management of the house. Even music, were there a demand for it, might find here and there a copyist among so large a number.

SECTION XIV.

OF PUNISHMENTS.

On this head, I shall not at present be minute: with regard to particulars, a few hints may serve — principles have been laid down in another work.*

Punishments may be increased in number without end, without being increased in severity; they may be diversified with advantage by being adapted to the nature of the case.

One mode of *analogy* is, the pointing the punishment against the faculty abused: another is, ordering matters so that the punishment shall flow, as of itself, from the offending cause. Outrageous clamour may be subdued and punished by gagging; manual violence, by the strait waistcoat; refusal to work, by a denial of food till the task is done. The Spartan discipline may, on this head, furnish a hint for the management of a penitentiary-house,† without pushing the imitation so far as to make want of dexterity a capital offence, or treating British criminals with the degree of severity said to be practised by Spartan parents on their innocent children.

Here, if anywhere, is the place for the law of mutual responsibility to show itself to advantage. Confined within the boundary of each cell, it can never transgress the limits of the strictest justice. *Either inform, or suffer as an accomplice.* What artifice can elude, what conspiracy withstand, so just, yet inexorable a law? The reproach, which in every other abode of guilt attaches itself with so much virulence to the character of the *informer*, would find nothing here to fasten upon; the very mouth of complaint would be stopt by self-preservation — "I a betrayer? I unkind? Your's is the unkindness, who call upon me to smart for your offence, and suffer for your pleasure." Nowhere else could any such plea support itself—nowhere else is connivance so perfectly exposed to observation. This one stone was wanting to complete the fortress reared by the inspection principle: so many comrades, so many inspectors; the very persons to be guarded against are added to the number of the guards. Observe here, too, another advantage of limited association over absolute solitude. In an ordinary prison, society is a help to transgression: in the cell of a Panopticon, it is an additional security for good behaviour.

Covered with the rust of antiquity, the law of mutual responsibility has stood for ages the object of admiration. Fresh from the hands of Alfred, or whoever else first gave it existence, what was the composition of this celebrated law? Nine grains of iniquity to one of justice. Ten heads of families, with walls, woods, and hills between them, each to answer for the transgressions of every other! How different the case under the dominion of the inspection principle! Here shines justice in unclouded purity. Were the Saxon law to be reduced to the same standard, what would be the founder's task? To give transparency to hills, woods, and walls, and to condense the contents of a township into a space of 14 feet square.

SECTION XV.

MODE OF GUARDING ON THE OUTSIDE.

For the more perfect defence of the surrounding wall, I have already ventured to propose a military guard.‡ Such a species of protection, though altogether foreign to the inspection principle, and less necessary to a Panopticon prison than any other, would not be without its use. It would add to the security, without adding to the expense. As far as the construction of the wall is concerned, it might even save expense; since with this help the height and consequent thickness of that boundary need be no greater than what was necessary to prevent conversation between the centinels without and the prisoners, except in a voice too loud not to be heard by the inspector in the *look-out*.‖

Mr. Howard, in competition with his own opinion, to which it gives me pleasure to find my own ideas so conformable — the good Howard,§ with the candour so well suited to his benevolence, produces the counter opinions of two friends of his — the one a worthy man whom I will mention, Dr. Jebb, because he is no more — the other a gentleman of the best intentions, and of the purest zeal for liberty, whom on the present occasion I choose rather to mark by these titles than by his name. According to the one, in no particular or possible circumstance the interference of the established "army should be admitted;" according to the other, "the objections against the military are numerous, obvious, weighty, and irresistibly conclusive." It is with concern one sees such opinions with respectable names to them, so worded and in print. A man writes naked *opinions* to a friend to whom he writes any thing: but to the public he gives *reasons*. As to the "objections," of which, however "obvious," none, I must confess, are discernible to my eyes—of these objections, if they weigh any thing, the lightest would have had more weight in it than all this sound. What! — "in no particular or possible circumstance?" — would it have been better

* Introduction to the Principles of Morals and Legislation, 4to, 1789.

† A boy was not to have his breakfast till he had shot it off a tree.

‡ Postscript, Part I. § 20, 21.

‖ Ibid. p. 102, and 108.

§ On Lazarettos, p. 224.

that London should have burnt on, than that the military should be employed in putting out the fires?

Upon the subject of this class of men, my notions, though not altogether so heroical, are, like those of the good Howard, much more simple. I would have as few of these regulars as possible; but from these few, as from all other public servants, I would draw as much service as I could. In what respect is the military instrument of domestic peace distinguished from the civil? In being more expert in the business, more efficient, better disciplined, more trained to suffer while it is possible, as well as to act when it is necessary, and in the event of his acting too briskly or too soon, more sure to be forthcoming and made responsible. But if the military, or any other strong and efficient power, is to be employed on any occasion, and against any body, against whom should it be made use of with less scruple, than against felons and their allies?

Is not prevention better than punishment? The better you are seen to be prepared against an attack, the less your danger of sustaining one. Which, then, shews the best countenance against desperadoes and incendiaries—an accidental civil force, or a standing military one? I mean always that sort of standing army which consists of a civil officer commanding a corporal's guard. *Si vis pacem, para bellum*, a maxim but too apt to be abused in matters of foreign politics, is surely in no great danger of being misapplied in the politics of a prison—a sort of monarchy which has never yet been noted for plans of conquest, or aggressive enterprise.

It is a matter of subordinate consideration, but surely not altogether undeserving of attention, that a service like this, of all peaceful services the most resembling a service of defensive war, is, with a view to that sort of war, one of the best schools that peace can afford, of military discipline. Among citizens, what sort of enemy so formidable? and what sort of citizen is it least to be regretted that a soldier should be in the habit of looking upon as an enemy?

Add to this, that the more frequently a guard changes, the less in danger it is of being corrupted. Let the change, then, be made a frequent one: the more it is so, the greater the number of those to whose lot it falls to share the benefit of this branch of military practice.

Would not the parade of military rigour help to impress the minds of men without doors with the idea of hard government?—would it not help to widen the distance between the lot of the persons thus coerced, and the condition, not only of the guiltless citizen, but even of the less obnoxious among malefactors? Would it not in this manner add to the terrific influence of the punishment, without adding to the sufferings of those who undergo it? Surely it would: for, once more, who is there that will deny the effect of scenery upon the eyes of the gaping multitude?*

The military guard thus given to the surrounding wall would not supersede the necessity of an unmilitary *porter* for the gate. Whoever officiated in that capacity ought, for several reasons, to be acquainted with the persons of all who belong to the establishment, and who, as such, may be allowed to pass and repass without examination. He ought likewise to be acquainted with the persons of the prisoners, lest any of them should make their escape in disguise; for instance, by borrowing or stealing the clothes of any of the under officers, or servants, or persons admitted occasionally to work in or about the house.

A centinel, therefore, that is, a soldier continually changing, would not so well answer the purpose. An artisan, whose employment consisted in some sedentary trade—a cobbler or a weaver, for example—might probably be found to accept of it, perhaps without any other recompense than the lodging it would afford;† at any rate for less than what would be necessary to pay him for his whole time.‡

SECTION XVI.

PROVISION FOR LIBERATED PRISONERS.

How to make provision for the prisoners at the expiration of their terms?—how to ensure for the future, with least hardship on their part, with due regard to their respective characters and connexions, and at the least expense, their good behaviour and their subsistence? It is time to be short—here follows a slight sketch.

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* I leave it to the authors of the penitentiary act to insert a common refectory into a plan of rigid solitude: But were I obliged to set the prisoners to eat in common, and like the Kings of Great Britain in former days, in public, it should be (still in pursuit of the same idea) under the guard of an armed party with presented muskets, loaded or unloaded, ready to fire on the first motion towards disturbance. To spectators, the entertainment might shew like that of the tyrant Damocles; but to those who partook of it, the danger would be but show, knowing that security depended upon themselves.

† Gatekeepers are commonly obtained on similar terms for parks.

‡ A fortress thus secured would have a collateral use. In times of riot, it would afford an asylum, where obnoxious persons or valuable effects might be lodged in perfect safety against every thing but cannon—an engine of destruction which has never yet been seen in the hands of any English mob; and it is only from ignorant mobs, even in times of civil war, that an establishment of this nature could have any thing to apprehend.

I. The prisoner not to be discharged but upon one or other of three conditions: —

1. Entering into the land-service.

2. Entering into the sea-service for life.

3. Finding some responsible householder who will be bound in the sum of [£50] for his good behaviour, by a recognisance renewable from year to year; with a stipulation for surrendering the body in case of non-renewal.*

II. To furnish an inducement capable of engaging not only relations or other particular friends, but strangers, to take upon them such an obligation, authority given to the prisoner to enter into a contract for a term of any length, conferring on his bondsman the powers following, viz.

1. Power of a father over his child, or of a master over his apprentice.

2. In case of escape, powers of recaption, the same as by 17 Geo. II. ch. 5, § 5, in case of vagrants; with penalties for harbouring or

* A set of provisions to this effect being enacted, an establishment of some sort or other would, I take for granted, be set up for the reception of as many of the convicts as either could not embrace, or chose not to embrace, any of the other options.

This subsidiary establishment, I likewise take for granted, would be carried on in a building erected on purpose on the panopticon plan; and no one seems so likely to be the undertaker as the contracting governor of a penitentiary-house upon the panopticon plan, as giving him every facility for getting the most work done, and making the most of that work. It would be worth somebody's while, because the convicts, having by the supposition no other course of life to betake themselves to, or none they liked so well, would serve on so much the cheaper terms. It would be better worth the governor's while than that of anybody else, because experience would have taught him how to apply the panopticon principle in the way of management to the most advantage, pointed out to him a profitable mode of employment, and shown him the precise worth of each man's labour. It would be better worth his while to set them to work in a separate panopticon of his own erection, and upon such terms as he and they could agree upon, than to have them continue on the footing of *remanents* in the penitentiary panopticon, with head-money to be paid him by government, on the same footing as at first.—Why? Because every such *remanent* would occupy the place of a prisoner in ordinary. The more he had of the former, the fewer, therefore, (if the number of such *remanents* were at all considerable) he could have of the other: whereas, upon the supposition of a subsidiary panopticon, the more workmen he could get to employ in it upon such advantageous terms, the greater would be his advantage. Engaging his workmen, too, for the subsidiary establishment for a considerable and certain term, he could depend upon them, and make his arrangements accordingly: whereas no *remanent* could be depended on for two days together; since at any time he might, for aught the governor knew, find some friendly bondsman, or at any rate embrace one or other of the other options. This uncertainty I keep up on purpose; lest in case of a deficiency in the number of the prisoners in ordinary, the governor, for the sake of the head-money, should make it worth the while of a prisoner, whose term was expired, to stay in upon the footing of a *remanent*, and thus continue a burthen to government, rather than embrace any one of the other options.

Why not oblige the governor, by a clause in his contract, to take *remanents* at a reduced price? Because nothing would be saved by it. Antecedently to experience, the governor could not be sufficiently assured in what degree, if in any, the labour of a convict would, upon an average of all the convicts, be more valuable at the expiration than at the commencement of his term: the more, therefore, he abated upon the *remanents*, the higher he must charge upon the prisoners in ordinary. It is on that account that my object is as much as may be to get rid of *remanents*, so that, if possible, there shall be none, except in the case of a man who has neither ability to pay an employer for his subsistence, nor friend, nor parish—a case which is likely to be extremely rare.

I had rather the penitentiary governor should get the emancipated prisoners in this way, than any other undertaker, whom the view of profit, and not any particular connexion with, or friendship for the prisoner, might induce to bid for him. Why? Because the governor is by this time a tried man in every respect, as well as a responsible one. It is on this consideration I view with satisfaction, rather than regret, the advantage he will have over any other master in treating with them, before the expiration of their terms. At the same time, I do not exclude other bidders. Why? Because such a monopoly would be a hardship on the prisoners, and that a needless one.

Considered as a fund of recruits, the penitentiary-house would be an economical one. What will be styled in boatswain's or recruiting serjeant's language *liberty*, and what, if it is to be called *servitude*, is at least an honourable one, may stand instead of *bounty-money*. The more irksome the civil subjection has been felt among a class of men distinguished at one time, at least, by their aversion to ordinary labour, the more likely they are to be caught by the bustling gaiety and frequent indolence of a military life. As a school for recruits—as a nursery for a profession in which everything depends upon obedience, what can equal an establishment in which, for a course of years disobedience has been impossible.

Can the source be objected to as a stain upon the service? Not surely by any one who can think with patience of the methods in which so large a portion of both departments has been habitually filled up under the present practice. On the present footing, in what state are criminals received into a service of which honour ought to be cherished as the vital principle?—when the marks of depravity and its attendant ignominy are fresh upon their heads: how under the proposed arrangement—after the guilt has been expiated—the moral disease cured, and the ignominy washed away by a course of purification still more public than the offence. I would go farther: I would draw a marked line between these recruits and others, nor admit the stigmatized upon an equal footing with the irreproachable, till after a term of additional probation gone through in the army itself, and a ceremony reinstating them in solemn form in the possession of lost character.

enticing, as by 5 Eliz. ch. 4, § 11, in case of persons bound, for want of employment, to serve as servants in husbandry.*

3. The contracting governor of the Panopticon penitentiary-house to be bound to keep the prisoner there, after the expiration of the term, though it should be for life, until discharged in one or other of the three ways just mentioned; and that upon terms, at any rate, not exceeding those on which he would be bound to receive a fresh prisoner:—and so in case of surrender by a bondsman.

4. The prisoner's parish to be bound, in such case, to give the crown an indemnification, not exceeding the utmost amount of the charge borne by reason of any pauper by that parish.†

5. The bondsman to be bound for the *maintenance*, as well as the good behaviour of the liberated prisoner, during the term of the engagement.‡

6. The governor of the penitentiary-house to be bound, on failure of the particular bondsman, to the extent of half the penalty specified in his recognisance in case of forfeiture.‖

7. The governor bound also, on such failure, for the prisoner's maintenance; but without being obliged to grant him relief on any other terms than those of his returning to the penitentiary-house, or engaging in his service for such time as shall have been agreed on.

8. Such bondsman's recognisance to be taken before justices in quarter or petty sessions, with power to the governor to oppose and cross-examine, as in the King's Bench in case of bail.

9. The recognisance to be registered with the clerk of the peace, and annually renewed: upon failure of renewal, the responsibility of the governor to revive, and with it the power of recaption.

10. Power to the governor and the prisoner to enter into a contract of engagement for any number of years, and that before the expiration of the term, subject to attestation before a justice, as in case of enlistment, and examination touching his consent, as in the Common Pleas in case of a *feme covert* joining in the disposal of an estate.

11. In case of dispute between the governor or any other master-bondsman and any such servant, justices to have cognisance, as at present in case of servants in husbandry.§

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* The stronger these powers, the easier it will be for the convict to find a master to his choice. Any one who, from relationship or any antecedent connexion, might be induced to stand bondsman to him without making advantage of his service, will he equally at liberty to do him the friendly office: and the better terms he is enabled to give, the better he will be able to make.

† No hardship on the parish: the burthen is no more than would fall on them of course: it gives them a chance of relieving themselves which they have not at present. The case of a *remanent* too helpless to do anything at all for his subsistence will be extremely rare. Whatever he is able to do, the governor knows by experience, and can take him off the hands of the parish upon terms mutually advantageous. A trade which, having been carried on in a panopticon penitentiary-house, might be carried on with equal advantage in a subsidiary establishment conducted on the same principle, might be incapable of being carried on in a parish workhouse.

‡ Otherwise he might give himself up to idleness, turn beggar, or throw himself upon the parish. The bondsman, when he had once procured the convict his liberty, might care little what became of him, so long as he kept from such offences as would operate a forfeiture of the recognisance, or committed them at a distance where his identity was not known.

‖ If no provision were made for scrutinizing into the bondsman's responsibility, members of gangs might become security for one another, as swindlers lend one another their names to bills. Such particular bondsmen being so many competitors of the governor's, generally speaking he would, it is true, have a natural interest, even without this artificial one, in opposing improper bondsmen. But such natural interest would be less and less, the less valuable a workman the convict were, whether through moral or natural infirmity. Besides that such a scrutiny, if it were not thus made the governor's duty as well as his interest, would be an invidious task. What is more, it is in this way made his interest that whatever reformation is effected in the behaviour of the convict by the penitentiary discipline, should be not merely apparent and temporary, but real and lasting.

To induce him to take upon himself all this responsibility, some allowance must be made him: but the degree of power given by the panopticon plan, and the confidence he will naturally have in his own care and skill in the application of that power, will render it unnecessary to be very liberal. Records or other documents will show the proportional number of instances in which a convict, after having been discharged from the hulks, has been prosecuted for any subsequent offence.

In case of a crime operating to the detriment of an individual, the forfeit, to the extent of the damage, might be applied to the purpose of indemnification—an object sadly and almost universally neglected by the criminal law. Prosecution for the forfeiture would thus, too, be rendered more certain. Recognisances to the crown are often of no effect, for want of an individual whose interest it is to prosecute.

§ The necessity of periodical renewal keeps alive the dependence, and with it the security. Honour and gratitude are ties too feeble for the law to trust to, where so much surer may be had, especially in the instance of such a class of men. Thus circumstanced, a man will avoid not only punishable misbehaviour, but idleness, drunkenness, begging, vagrancy—anything which can lead to such misbehaviour, or excite an apprehension of it. Moreover, the shorter the term, the less the bondsman's risk: the less, therefore, the difficulty of obtaining one—another instance of a provision beneficial at first view to the bondsman alone, but in effect still more so to the convict.

12. Any such contract so made with a prisoner, not to give him a fresh settlement.

13. Power to government to remove to his parish any such *remanent* remaining on the penitentiary establishment after the expiration of his term.*

14. Power to the parish to bind over to the governor a remanent removed, or liable to removal; and that for a term not exceeding seven years in the first instance, nor one year ever after.

Is there anything wanting in the provision made by this plan?—anything to public *security*, to *economy*, to *humanity*, to *justice?*

The *securing* the public against the future ill-behaviour of a discharged convict has hitherto been looked upon as a problem, insoluble except by death, or some other punishment which, under the name of a temporary, should be in effect a perpetual one. The idea of absolute incorrigibility is accordingly the idea which, in many an estimate, stands inseparably annexed to that of a thorough-bred London felon. Be it so: upon this plan, be he ever so incorrigible, the public will have nothing to fear from him, since, till he has given satisfactory proof to the contrary, he will not be let loose. When a suspected person is put under the care of a boatswain or a recruiting serjeant, the public peace, as far as he is concerned, is universally looked upon as sufficiently provided for; and the great diminution thereby supposed to be effected in the proportionable number of crimes is reckoned upon as no inconsiderable compensation to set against the miseries of war. But to put even this security in competition with that which is afforded by the Panopticon discipline, would be doing the latter great injustice. The security afforded by the military discipline, or a still better—such, then, is the assurance which the public obtains of the good behaviour of every individual who has gone through his term in a panopticon penitentiary-house; such alone excepted, for whom the affection of friends may have found particular bondsmen, and who, by the confidence thus reposed in them, have given proofs of a degree of trust-worthiness sufficient to place them, in this respect, on a level rather above than under that of the ordinary run of men.

Will reformation, inward reformation, be, or not be, the result of such a course of discipline? My own persuasion, my full persuasion, and I hope it is not too sanguine a one, is, that with very few, or perhaps no exceptions, it will be found to be so; and that at any rate, in such a period as that of seven years, the very disposition to mischief will be found to have been subdued. But should even the disposition remain, the ability will, at any rate, be chained down; and so long as that is the case, how it is with the disposition, is a question which, to every temporal purpose at least, it is as immaterial as it would be difficult to resolve.

As to *economy*, the terms on which a man is subsisted cannot in any instance be more disadvantageous to the public than on the present footing; and no bounds are set to the reduction of the disadvantage.

Is there anything wanting in the attention paid to the particular circumstances and feelings of individuals? Merely for want of employment, persons to whom no guilt is imputed may, by the statute of Elizabeth, be forced into service in husbandry, or, by the custom of pressing, enforced by occasional laws, into one or other branch of the military service; and in both cases without any option as to the employment, much less as to the employer. Here, no fewer than four options are given to convicts—options, too, which extend to the very person of the employer. Men accustomed to a style of life superior to that of the common run of those who are obnoxious to this fate, would, under a punishment nominally the same, suffer more than their comrades in effect. Such persons may, by the generosity of a disinterested bondsman, find themselves clear of every obligation of service. A father may thus rescue his son, an uncle a nephew, a brother a brother, from the hardships of a degrading servitude. Independently of such contingencies, prisoners who have either brought a general good character into the house (for even such will not be altogether wanting,) or acquired one there, and are either able to get a livelihood, or provided with friends who would furnish them with one, will be sure of bondsmen: and the faculty of investing the bondsmen with such ample powers will

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* To prevent remanentcy by collusion betwixt the governor and an able-bodied convict: If the allowance made by government for remanents is greater than what it would cost the parish to maintain a man in their workhouse, they will remove him thither of course: and the consideration of being subjected to such removal will prevent a lazy convict from throwing himself unnecessarily on his parish, where, if he could be maintained in idleness, he would naturally be disposed to live. If the governor, or whoever else sets up a subsidiary panopticon, finds it worth his while to take charge of the convict for a less consideration or for nothing, the parish will in proportion be eased of the expense. By this plan, the burthen to the public can scarce in any instance whatsoever suffer an increase: and the probability is, that upon the whole it will be much diminished. The only possibility to the contrary is the case of a remanent convict who is at once parishless and helpless. But this case cannot be a frequent one, and the governor being eased by his helplessness of all fears from his unruliness, can hardly insist upon any advance in his terms on binding himself in his contract to provide for all persons so circumstanced at parish price.

render it so much the easier for the prisoner to find one. The more valuable a member of the community he is become in all respects, the better will his condition be, since he will find employers bidding against one another to obtain him.

Suppose him, for want of particular friends or connexions, engaged with the governor or some other undertaker in a subsidiary panopticon: in what respects would his condition differ from that of ordinary service?—only in the engagements being for a longer term, and putting it out of the power of the servant, by absence or intoxication, to deprive the master of the benefit of his service. In these circumstances, a variety of indulgences would naturally take place: abatements would be made in the number of working-hours; a curtain would guard the times of recreation and repose from the importunity of an inspecting eye; every seventh day would be a day of perfect liberty; the comforts of matrimony would in this situation at any rate lie within reach;—in short, instead of being termed a state of confinement sweetened by indulgences, the justest as well as simplest point of view in which it can be considered is that of a state of free service, only somewhat better guarded than ordinary against misbehaviour and abuse.

I hear an objection—"Your subsidiary panopticon is a receptacle for manufacturers working in numbers under a common roof, and such receptacles are found by experience to be nurseries of vice. The manufactories, the only manufactories favourable to virtue, are the dispersed, the rural manufactories—those which spread themselves over the face of a country, and are carried on in private families by each man within the circle of his little family, in the bosom of innocence and retirement." Be it so: it may be so, for aught I know. But how great the difference, or rather how striking the contrast, betwixt an ordinary manufactory and one carried on upon the panopticon principle! Is there anything in the air of the country or in the structure of a cottage that renders it inaccessible to vice? is the connexion betwixt virtue and secresy so exclusive? No: the advantage which the domestic manufactory has in this respect, over the most public manufactory, is not to be compared with that which the panopticon discipline has over that of the purest of all manufactories upon every other plan, public or private. In what other house, public or private, can equal security be found for the fidelity of the married, for the chastity of the single, and for the extinction of drunkenness, that murderous infatuation, in comparison of which every thing else that goes by the name of vice is virtue?*

How is it that in public manufactories vice insinuates itself? How? How but for want of the inspecting eye of some one who has the power, and may be made (if he has not already) to have the inclination to suppress it? With respect to drunkenness, above all things, is it possible that such inclination should be wanting to any master?—of all others, to the master of an indented servant? The drunkenness of the servant is the master's loss: what the one suffers in his health and morals, the other suffers in his purse.

This plan is not altogether so simple as I should have been glad to have found it: but simplicity, though it ought never to be out of our eyes, is not always in our choice. There are other plans, which, at least as far as concerns the option—I should say the no-option—given to the convict, are much more simple: but I leave to whoever is ambitious of it, the praise of purchasing simplicity at the expense of economy, good morals, humanity, and justice.

A plan is good or bad, either simply with relation to the end in view, or comparatively with relation to others directed to the same end.

The end in view here is to ensure the good behaviour and subsistence of convicts after the expiration of their punishment, regard being had to economy, humanity, and justice. If perfection be still at a distance here, shall we find anything nearer to it in the colonization scheme, or the penitentiary act?

Out of 687 convicts, sent to a country from whence return without assistance from government is known to be impossible, 20 had been sentenced for 14 years, 630 for 7 years, 12 but for 5 years (tenderness for the tender sex dictated the limitation here,) 35 only, little more than a twentieth of the number, for life.† Was it the intention that, at the expiration of these terms, vessels should be sent out to give effect to the limitation in the sentence? If so, what becomes of the security? and what are we to think of the expense?‡ Was it that they should be left

* To possess a just and adequate conception of the powers of the inspection principle, requires a deeper insight into its nature and effects, than can be expected, perhaps, from any one at first glance. So long as this perfect conception has not yet been formed, objection upon objection may be expected to arise. Many such I have accordingly heard: but none against which a maturer view of the subject would not have shut the door.

† From the list at the end of Governor Philip's Voyage.

‡ A hint has been given of the utility of a panopticon penitentiary-house as a nursery for military service. How useful it might be more in the same capacity to the colonization scheme. In this case, the trades the prisoners were employed in, and the instructions of all sorts they were made to receive, might be adapted to that object, and made subservient to their final destination. Every embarkation supposes an abode of at least six months upon an average, in some

fixed for life on the spot to which they were consigned with such nicety of discrimination, for fourteen, seven, and five years? If so, what is the sentence, or the pretended execution of it, but a mockery of justice?*

Suppose them brought back: what is the provision for them then? None; no more than if they had never been sent there. Suppose them to stay: what is to be the lot of such of them as become chargeable—I mean supposing the time come when there can be any that are not chargeable? Either they are left to starve, or Great Britain is their parish, though they cannot be removed to it. Will their maintenance there cost less, at the distance of seven months sail, than at home?—in a country which has nothing, than in a country which has every thing?†

So much for the colonization scheme: what says the penitentiary act?

Decent clothing;—money in a man's pocket—for a year not more than £3, nor less than 20s.—for a shorter term in proportion; and if anybody will *talk* of finding employment for him, and he has behaved well, more money to the same amount at the year's end.‡

From twenty to sixty shillings at a year's end? What is that to do? how is it to find a man employment? No employment without an employer: how is it to give him one? what inducement does it hold out to anybody to take upon him that friendly office? None; no powers—no factitious security of any sort, to supply the natural want of confidence. Were employment offered, what obligation, what *inducement*, to *accept* of it? They may choose to become beggars, not to say thieves—and what is there to hinder them? If the fear of starving on the spot will not force a man to work, will a few shillings to be received at a year's end bribe him to it? For whose *sake* should anybody furnish the employment?—for his own? The act gives him no motive. For the convict's? No; nor in that way neither. If he will not to save him from starving, will he for the sake of getting him a few shillings, which he is not to have till it has been proved that he can do without it? Of what *kind* is the employment to be?—one that requires no *confidence?* The allowance is not wanted: why throw away so much money? If a man has gained an honest livelihood for a year together, what

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intermediate receptacle: for embarkations neither have taken place, nor probably will take place, oftener than once a year upon an average. What a contrast, in this point of view, between a penitentiary panopticon and the hulks! and for the female sex, between the industry and purity of such an establishment, and the idleness and profligacy of a common prison! Bibles and other books are sent out with pious care for the edification of these emigrants, when arrived at their land of promise:[a] but what are Bibles to unlettered eyes? In a preparatory panopticon, they might be initiated not only in the art of reading, but in the habit of applying such their learning to a pious use.

* The House of Commons, when the information laid before them has been perfected and digested, will, it is to be hoped, inform us.

Already there are many, as appears by the above list, whose term has been up above a twelvemonth, and it does not appear that any steps have been taken towards rendering their return possible.

As their times are expiring all the year round, supposing ships to be sent out for this purpose but once a-year, which is as often as they sail at present for that country, the addition thus made to the term specified in the sentence, would, even on this supposition, be six months upon an average. But, compared to *false imprisonment* (to use the law phrase) or rather *false banishment* for life, which seems to be their present doom, an oppression of the same kind for no more than six months is scarce worth mentioning.

† Vessels used not to be sent for the re-importation of convicts after transportation to America.—True: neither was there occasion: returning thence was but too easy, and that was the great grievance.

If, instead of being sent to New South Wales to be kept for life at the rate of £60 a-year a-head, they had been set down upon a barren rock to starve, would it have been said that there was nothing unjust in this, because there was no law forbidding them to buy food, or forbidding others to supply them with it? Would an illegal prohibition opposed to the right of return be a greater injustice than a physical impossibility?

‡ According to the best calculation I can make, the present expense per head may be reckoned at about £60 a-year—an expense the total cessation of which may be demonstrated to be impossible, and in which any considerable degree of reduction is an event which after three years trial seems at a distance as indefinite as ever. The provision made for a gentleman in a situation of great trust is in many instances (that of a clerk of the Bank for example) not equal to it.

The present is not a place for a full examination of the New South Wales colonization scheme. I will only mention the result, which is, that supposing the adoption of the panopticon plan, the cheapest as well as the best course in every point of view that could be taken, would be to send a fleet, and re-import the whole colony at once: that the next best course would be to confine the future exportations to those who were sentenced for life; and among those, if colonization, that is propagation, be the object, to limit the males to a number proportioned to that of the females capable of child-bearing, that is, exceeding it in the ratio of no more than about one-twelfth or one-thirteenth.

It is but justice all this while, to whoever was the author of this plan, to observe, that he had not the option of a panopticon before him, and that with regard to the important branch of security here in question, his is as efficacious as we shall find that of the penitentiary act to be otherwise.

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[a] See Papers laid before the House of Commons in 1791, relative to the settlements in New South Wales.

should hinder his continuing to do so? Is *confidence* necessary? the allowance is of no use. Will the one, two, or three pounds, the convict is to have a year hence, render him trustworthy to-day, in the eyes of any one to whom he would not appear so otherwise?

One man is fortunate enough to have connexions: another man has none. The one gets a friend to *say* he will take him (for as to engagement it is out of the question;) the other, not. Both live out their year with equal honesty. Why is the former to have all that money, and the latter none of it? why give him who has most merit nothing, while you pay the other for his good fortune? Let him who has the happiness to have friends enjoy the benefit of their friendship: but is he to be rewarded for it too, and that at the public charge?

Decent clothing—so far, so good—a man is not to be turned out naked. But all that money in his pocket—as soon as he is out of the house, what is that for? Is it to furnish him with a few other necessaries besides clothing, such as bedding, household furniture, and tools? One would think so. But if so, how comes the allowance to be pared down and reduced in the inverse ratio of the time he has passed in prison? Will a shorter bed or a smaller table serve a man who has been there but half a year, than him who has been there a whole one? One would think the foundation of the act in this part were the supposition of its own injustice; and that the money, instead of *equipment*-money, were meant as *smart*-money. "Poor fellow! You have suffered so much more than such an one: here is so much more for you, to make you amends."

Set a beggar a-horseback, and the proverb tells you where he will *ride*. Is the beggar likely to prove the more prudent horseman for having been bred in the school of felony? The penitentiary act sets a whole regiment of such beggars on horseback, and it gives them no master to hold the reins. Men who have given such testimonies of themselves, surely are not much injured in being compared to school-boys. Can prudence, can economy, be expected generally to prevail during the ecstasy that will so naturally mark the period of emancipation? Is not the idlest school-boy he who has the heaviest pocket? What parent, instead of giving the quarter's board to the master, would give it to the child? *Light come, light go*, says another proverb, not more familiar than true: the same sum, collected by a man's own economy, might hope for a better fate.

These little pecuniary allowances do not strike at the root of the difficulty—they do not apply to the right person. In the convict, you see a man in whose breast the passion of the day is accustomed to outweigh the interest of the morrow: in the contracting governor, you have a man who knows what his lasting interest is, and is in the habit of pursuing it.

The means he may have of exercising a desirable influence on the behaviour of the convict, are as powerful as heart can wish: make it his interest to exert that influence, and the object is attained. This man, whom you know, is the man to deal with, and not the convict, of whom you know nothing but what is to his disadvantage. With the latter, it is all *nudum pactum*—all giving, no receiving: you can stipulate nothing, you can depend upon nothing in return. Strike your bargain with the contracting governor, you have some ground to stand upon; you can get an indemnity in case of disappointment: if your discharged prisoner turns out honest, the object is attained; if otherwise, you get your money back again with interest.

Nothing can be more laudable than the humanity which dictates the provision we have been examining; the misfortune is, that so respectable a motive should not have pitched upon happier means.

The following Note respecting this Work was given by Bentham to Dr. Bowring, 24th January 1821.

THE Plates referred to in this work were destroyed by a fire at the printer's.* An improved plan of construction is shown in a small plate inserted in the work entitled "Pauper Management improved."

The main body of the Panopticon was sent to the press at Dublin by Sir John Parnell, at that time Chancellor of the Irish Exchequer. Sir John Parnell tried in vain to obtain the adoption of the plan in Ireland. Mr. Pitt, with his colleague Mr. Dundas (afterwards Lord Melville,) laboured, and with like success, in England. The design of building a Panopticon prison lingered from 1791 to 1813, when, by the erection of another prison, without any of the advantages, and more than ten times the expense, it was finally extinguished. George the Third was inexorable. He had been irritated at the author by the

* In note †, p. 67, it is stated that the Editor has been unable to obtain a copy of the Plates. Since that sheet was thrown off, they have been fortunately discovered, and appear in this edition. For reasons which the text sufficiently explains, it has been deemed unnecessary to give the more imperfect plan in Plate I.

guished. George the Third was inexorable. He had been irritated at the author by the Plan for the Judicial Establishment in France; and before that, *anno* 1789, by two letters in a morning paper signed Anti-Machiavel, written against the war in which the King laboured without success to engage the nation against Russia. To the first of those letters appeared an answer, which the Earl of Shelburne, who had been Secretary of State, and after that Prime Minister, and at that time had his connexions in the King's family, gave the author to understand was written by the King himself.

After delays upon delays, an act of Parliament was passed, by which the faith of Parliament was pledged to the author for the adoption of his plan; and at last, in 1813, another act to authorise the violation of that pledge. To prepare for this violation, a Committee of the House of Commons had been got up by the Secretary of State, Lord Sidmouth. The plan had been recommended by the famous Finance Committee of 1797–8, of which Mr. Abbott, afterwards Speaker, now Lord Colchester, was chairman. A contract had been entered into, and in consequence the author put into possession of a spot of land. For the commencement of the business, the signature of George III. was necessary; after an unexampled delay of three weeks, that signature was at length peremptorily refused. The official correspondence on the subject would fill a volume. To the all accessible and inspectable prison in question, Lord Sidmouth has substituted a Bastile, not to be visited, without his order, even by constituted authorities.

While nations consent to put into any hands an uncontroulable power of mischief, they may expect to be thus served.

PANOPTICON *versus* NEW SOUTH WALES:

OR,

THE PANOPTICON PENITENTIARY SYSTEM,

AND

THE PENAL COLONIZATION SYSTEM,

COMPARED.

In a Letter addressed to the Right Honourable Lord Pelham.

BY JEREMY BENTHAM, OF LINCOLN'S INN, ESQ.

My Lord,

The letter of which these printed pages form a part, was begun in the view of its being submitted to your Lordship in manuscript. Destined to represent the treatment experienced during a period of eight or nine years from the servants of the crown, by a plan that has twice at their own solicitation received the sanction of parliament — (the second time, after urgent reasons given by the committee on finance for the continually professed execution of it, and no reasons ever given by any body for the suspension of it) — the history had advanced to that stage, in which, for the first time, a disposition to "relinquish" the plan now termed a "project" (after a contract drawn, and land purchased in execution of it) — degraded thus from a plan to a project — had been avowed. Now, lately having, through an authentic channel, received intimation of an intention on your Lordship's part to "converse on the subject with the Lord Chancellor and the Judges;" it occurred to me, that whatever opinion, if any, were eventually to be obtained from any such high and ever revered authority, any such opinion would not be the less instructive, if in this, as in other instances, it were to have had the opportunity of grounding itself on such evidence as the nature of the case afforded.

After this explanation, I proceed to submit to your Lordship that part of the originally intended address which bears more particularly upon the point in question, detaching it on the spur of the occasion from whatever was originally designed to precede or follow it.*

* The relinquishment here in question was hypothetical, and but hypothetical, in form, though hitherto it has been categorical in effect.

Fourth and last ground for the *relinquishment* of the Penitentiary system: "*The improved state of the colony of New South Wales.*"

Of the three other grounds† the inanity has been displayed: there remains this single ground to bear the strain of the whole measure — I mean, not of the penitentiary establishment, but of the *relinquishment* of it.

To justify the predilection shewn for the distant establishment, and the use thus made of that predilection, those who have taken upon themselves to make this collateral use of it, have two propositions to make good:

1*st*, That of the two rival modes of punishment — the punishment by transportation to New South Wales, and the punishment by confinement under the intended penitentiary establishment — the former is the preferable one.

2*d*, That it is to such a degree preferable, as to justify the laying aside the other altogether, and inclusively the imposing on the public that expense — expense in all its shapes — money, public faith, character of public men — with which the ultimate sacrifice of the thus long suspended establishment would be attended.

The first proposition is the leading one: in this is contained the principal point in issue: this being determined in the negative, the other will be superseded. How, then, shall it be tried? by analytical investigation, sup-

† The three other grounds were — 1. Lapse of time; 2. Increase of terms, meaning thereby, of public expense (an increase barely proposed, and studiously forborne to be insisted on;) 3. Improvements observed to have been made in some of the existing gaols. Of two of these grounds, a recapitulatory glimpse may come to be given in the course of the present pages, under the concluding head of Economy.

ported by specific evidence? or by vague assertion, supported by a few customary phrases? "In the former mode, certainly," says a voice, which I recognise for your Lordship's, being that of reason and justice — by the former mode, as being the only true one, how far soever it may be from being either the more generally commodious of the two or the more usual.

The two rival systems in question being systems of punishment, whichever of the two is the preferable one, must be that which will prove to be so on joint reference to the several *objects* or *ends* of penal justice.

Objects or ends of penal justice, five:

1*st*, *Example* — prevention of similar offences on the part of individuals at large, viz. by the repulsive influence exercised on the minds of bystanders by the apprehension of similar suffering in case of similar delinquency.

2*dly*, *Reformation* — prevention of similar offences on the part of the *particular individual* punished in each instance, viz. by curing him of the *will* to do the like in future.

3*dly*, *Incapacitation* — prevention of similar offences on the part of the same individual, by depriving him of the *power* to do the like.

4*thly*, *Compensation* or *satisfaction*, viz. to be afforded to the party specially injured where there is one.*

These four from Blackstone and from everybody: to these four I will venture to add a fifth, *Economy*. The four first, *direct* ends — ends to which the several measures adopted ought to tend in a direct course; the last, an *indirect* or *collateral* end — a mark which, though not the direct object of any such measure, ought not to be departed from to any greater distance, than the pursuit of the other direct ends shall be found to render unavoidable.

The list of these objects belongs to the A B C of legislation: if the application of it to practice had been equally familiar, your Lordship will judge whether it would have been possible the country should ever have seen any such establishment as Mr. Pitt's and the Duke of Portland's "improved colony of New South Wales."†

Assuming these five to be what without dispute they ought to be, the common objects of both systems, let us consider each object by itself; and calling in the two systems, one after another, hear what each promises to perform, or may be considered as having performed, towards the attainment of that common end.

I. First object — *Example* — prevention of future offences by means of it. What, in the first place, is the course taken for this purpose by the *colonial*, the *transportation* system? The convicts and their punishment are removed by it to the antipodes, as far as possible out of the view of the aggregate mass of individuals, on whose minds it is wished that the impression should be made.

What is the course taken in the same view by the *penitentiary* system — *Scene of punishment*, the vicinity of the metropolis — the very spot which contains the greatest number of spectators of all descriptions, and in particular of those in whose instance there is the strongest reason for wishing that the impression may be made.

Plan of management — such as has for its object the pointing the impression by all imaginary contrivances to this end, the strengthening it by all apposite means, the multiplying by every imaginable device the number of the visitors and spectators — a perpetual and perpetually interesting drama, in which the obnoxious characters shall in *specie*, at any rate, be exposed to instructive ignominy, the *individuals* being with equal facility capable of being exposed to it, or screened from it, as, in the judgment of those to whom it belongs to judge, may be deemed most eligible upon the whole.

II. Second object — *Reformation*. Under this head, what, in the first place, does the "improved colony?" Delinquency, in the case of offences in general, and the class of offences here in question more particularly, may be considered as having for its positive and primary cause, a sort of morbid sensibility with reference to those enjoyments and those sufferings or uneasinesses, the pursuit or avoidance of which have respectively given birth to the offence. It may be considered, again, as having for its negative and secondary cause, the absence of those peculiar appropriate restraints, from which, had they been present, that vicious propensity might have received an efficacious check. Delinquents, especially of the more criminal descriptions, may be considered as a particular class of human beings, that, to keep them out of harm's way, require for a continued length of time that sort of sharp looking after, that sort of particularly close inspection, which all human

* Of all these ends, *example*, be it observed, is beyond comparison the most important. In the case of *reformation*, and *incapacitation* for further mischief, the parties in question are no more than the comparatively small number of individuals, who having actually offended, have moreover actually suffered for the offence. In the case of *example*, the parties are as many individuals as are exposed to the temptation of offending; that is, taking the character of the delinquency in the aggregate, the whole number of individuals of which the several political communities are composed — in other words, all mankind.

† The words used in the secret correspondence between the two offices—Documents dated 13th August 1800; 25th August 1800; 17th March 1801 — Disclosed (on the change of ministry) in "Further Proceedings of the Treasury," printed (for the use of the House of Commons) by order dated 12th June 1801, pp. 79, 80, 81.

beings, without exception, stand in need of, up to a certain age. They may be considered as persons of unsound mind, but in whom the complaint has not swelled to so high a pitch as to rank them with idiots or lunatics. They may be considered as a sort of grown children, in whose instance the mental weakness attached to non-age continues, in some respects, beyond the ordinary length of time.*

To this mental debility it is the characteristic feature of the system in question — transportation to a new planted colony — to be radically incapable of administering that corrective aid which, in the case in question, is so perfectly indispensable. *Field husbandry* is, under this system, the principal employment — field-husbandry carried on by individuals or heads of families, each occupying a distinct dwelling, the interior of which is altogether out of the habitual reach of every inspecting eye. At sleeping times, meal times, times of recreation, no inspection whatsoever: even at working times, none but what is imperfect, interrupted, and accidental. Hence no preventive check to those propensities, the peculiar strength of which has been but too plainly demonstrated by the offence by which the individual was conducted to the scene of punishment — propensities, the indulgence of which is either itself a crime, or introductory to those vicious habits which are regarded as the immediate sources of crimes — sloth, drunkenness, gaming, venereal irregularities, profaneness, quarrelsomeness, mischievousness, rapacity.

Thus, then, on the ground of controul to vicious propensities, stands the parallel between the transportation system and the penitentiary system — the transportation system according to the New South Wales edition of it — the penitentiary system according to that edition of it to which, even in the act of sacrificing it on the altar of secret influence, no man ever durst take upon him to refuse the application of an *improved* one. Colonizing-transportation-system: characteristic feature of it, radical incapacity of being combined with any efficient system of inspection. Penitentiary system: characteristic feature of it, in its original state, frequent and regular inspection; in its extraordinary and improved state, that principle of management carried to such a degree of perfection as till then had never been reached, even by imagination, much less by practice.

Inspection, the only effective instrument of reformative management, being thus essentially inapplicable, and the founders of the colonial system having thus given themselves the nature of things to fight against, they set about it at their ease. Reformation, it was understood, is a species of manufacture: like other manufactures, it requires its particular capital or stock in trade: the assortment being good, that is, in sufficient quantity, and of the accustomed quality, the business will go on in regular course like other businesses. Different sorts of workmen must be got, most of them in red clothes; but to complete the set, there must be some in black, and these must have a particular sort of workshop to themselves, with tools belonging to it. Accordingly, an assortment was provided, not only of officers, civil and military, but of ministers of religion. Besides soldiers, and barracks, and guns, there were to be, and were accordingly, sooner or later, in a proportion more or less adequate, chaplains, and chapels, and good books. Thus far the head reformers saw: farther than this, it was not given them to see. Would the books be read? the chapels visited? the chaplains heard? That was the concern of the chaplains when they got there. Was it in the nature of the case, that any of these events should ever happen? a wild, speculative, out of the way question this — quite out of the line of practice. With great submission, however, to better judgment, it would not, I will venture to say, have been altogether an irrelevant one: a trigger is scarce pulled before the breath may be driven out of a refractory body; but to purify a corrupted heart, especially where nothing is to be got by purifying it, is an operation not quite so simple or so sure.†

* Policy, or I am much mistaken the deepest and steadiest policy, will be found to concur with the tenderest humanity, in regarding the criminal world in this instructive and unimpassioned point of view. To an eye thus prepared, the most profligate offender will present — on the one hand, no fitter object of unprofitable resentment; on the other hand — no less necessary object of preventive coercion, than would be presented by a refractory patient or a froward child. Guided by this analogy, the favourite remedy, *death*, has for these five and thirty years appeared to me (in the cases, at least, in which it is ordinarily applied) scarcely in any degree less absurd in a political, than it would be in a medical point of view. In point of fact, nothing that can with any tolerable propriety assume the name of policy — not sober reason — not so much as reflection — appears at any time to have been the efficient cause of the use so abundantly made of it. Vengeance, passion, began the practice: prejudice, the result of habit, has persevered in it.

† Number of chaplains, at one time, one; at another, two: stations, at first but one; before Captain Collins left the colony, from five to ten, each to appearance at too great a distance from the rest to send auditors to a congregation collected at any other. In the map annexed to Captain Collins' book, I observe about this number of separate stations, without including such small ones as, being to appearance each of them within two or three miles of some other, may be supposed not too far distant for that purpose. Are the labours of the sacred function to be regarded as an essential article among the efficient causes

Circumstances so favourable to a system of incapacity and negligence, could scarce in any other case have presented themselves. The measure was, indeed, a measure of experiment, and experiment is that sort of operation which calls for the exercise of all sorts of faculties: but the subject-matter of experiment was, in this peculiar case, a peculiarly commodious one—a set of *animæ viles*—a sort of excrementitious mass, that could be projected, and accordingly was projected—projected, and as it should seem, purposely—as far out of sight as possible.

Turn now, my Lord, to the penitentiary system; in which, if the principles pursued as above, are to be considered as the standard of orthodoxy, the scent of heresy must be acknowledged to be but too strong. In a Panopticon penitentiary system, supposing religion to be really a source of benefit—supposing it good for anything beyond a show—men would have had the full benefit of it. Church attendance would *there* have neither been forcible nor yet eludible. The presence of my chaplain it would have been little less possible for them to fly from, than from that of the Almighty whom he served. Unable, neither would they have wished, to fly from it. It would have been adorned and fortified by those accompaniments which, in ministering to this branch of instruction, would have combined with it as much appropriate and congenial entertainment, as inventive industry could contrive to bring together in a situation from which every rival attraction might so effectually be excluded. Yes, my Lord, my whole treasury of artifices would have been ransacked for contrivances to render the tuition as interesting as possible to the pupils; my whole dispensary would have been rummaged for sweets and conserves, to render the physic of the soul as palatable as possible to a class of patients in whom the need of it is so eminently deplorable. Nothing which, in the judgment of my superiors *ad hoc* in the spiritual college, should, in consideration of its conduciveness to the end, stand approved, or though but tolerated,

of reformation? Then the establishment of from four to eight of these stations, of every number above that of the chaplains—was, and continues to be, indefensible. Instead of being a necessary, is religious service a mere luxury? Then no such officer as a chaplain should have been sent out at all—none at least for the convicts—none, unless it be a regimental chaplain for the benefit of the military; though, indeed, of the military themselves the distribution must have been regulated in some measure by that of the convicts—that of the watchmen by that of the persons to be watched.

Of late, malcontents from Ireland have been sent in multitudes to New South Wales. Part of them, probably the greater part, must have been of the Catholic persuasion: among these, have there been any priests? It seems not improbable; and if so, as far as their quarters may have been within distance of the stations of their lay companions, so far all may have been right. Have there been no priests? Then surely one priest, at least, should have been sent out on the same voluntary footing as the clergymen of the Church of England. If there be a difference, of all branches of the Christian religion, the Catholic is surely that in which the services of a consecrated minister are most strictly indispensable.

In Norfolk Island, how is it? If there be a clergyman now (and I have not found that there is one,) there was no such officer, at least so late as on the 18th of October 1796, though at that time the number of inhabitants was already 887.[a] *Quere* 1. How many fewer souls to be saved have 887 persons in Norfolk Island, than the same number of persons in New South Wales or Great Britain? *Quere* 2. If out of 4848 persons, sacerdotal service be needless to 887 taken at random, what need is there of it for the rest? In January 1792, a minister of religion (the chaplain of the New South Wales corps) did, it appears, pay a visit to that spot. It was, however, the first visit of the kind in so many years; and that a mere temporary excursion, the fruit of spontaneous zeal, and not of any particle of attention that appears ever to have been paid to the subject by the arch-reformers here at home.[b]

But to judge from the whole tenor of Captain Collins' Journal, as well as from the nature of the case, the truth is, that so far as the convicts were concerned, the real service which it was in the power of any ministers of religion, of any persuasion, or in any number, to render to these poor wretches, was in all places alike: presence or absence made no sort of difference.

What is above was written before the historian's second volume had made its appearance. In this continuation it appears, that in one of the importations of the convicts from Ireland, a priest of the Catholic persuasion (Harold by name) was actually comprised.[c]

If instead of this seditionist, a loyalist clergyman of the same religious persuasion had been sent out, such an addition to the civil establishment might, in that country, one should have thought, have been not ill worth the expense. The *political* sanction might thus have found in the *religious* a useful ally—a useful defence against the hostility of the *popular* sanction. The spirit of tumultuary violence, the epidemic malady for the cure of which these deplorable objects had been ordered to this disastrous watering-place, might in that case, instead of being constantly stimulated, have been gradually allayed. The rebel priest, the most pernicious pastor that could have been found for the rebel flock, might have been consigned to Norfolk Island, on the supposition of their remaining all of them in New South Wales. The two lives which it was afterwards deemed necessary to sacrifice to public justice and security might thus have been preserved,[d] and the exigence which has given birth to so dangerous an expedient and precedent as that of volunteer associations among unreformed convicts,[e] might never have taken place.

[a] 1 Collins, pp. 504, 508, 512, 497.

[b] Ibid, p. 194.

[c] Ibid. p. 293.

[d] 2 Collins, p. 333.

[e] Ibid. p. 303.

would, on account of the novelty of it, have been shrunk from, or on account of the expense of it, have been grudged. *Valeat quantum valere potest*, would have been my maxim; and that (mistake me not, my Lord) not as a pretence for indifference and neglect, but as a memento and a spur to attention and to activity. Men who have the interests of religion most at heart, and whose endeavours have been most conspicuously bent to the turning it to the best possible account in the way of practice—such are the men my hopes had always pointed to for counsel and support. Such, my Lord, were *veneficia mea*—my pious frauds: the stock of them, I assure your Lordship, was not a scanty one. Delinquency (if —— and —— would have given leave)—delinquency in habit, in act, even in idea, would have been shut out; shut out, not merely by spiritual bars, by moral bars, by legal bars, but by physical ones.

In no point did my system rest itself upon cold forms. In body, in mind, in every way, if my patients suffered, I suffered with them. By every tie I could devise, my own fate had been bound up by me with theirs. *Vicinity* to the public eye—vicinity was the object with me, not distance. Recluse by inclination, popular at the call of duty, I did not shun the light—I courted it. Self-devoted to the task of unremitting inspection, it would have been a reward to me, not a punishment, to be as unremittingly inspected.

Thus, in so far as reformation is concerned, stands the comparison between the two systems, on the ground of general principles or *theory*, if a word so much in disgrace with men in whose vocabulary *practice* is synonymous with *wisdom*, may for the moment be endured. A theory is, indeed, no farther good than in so far as its indications receive, as occasion serves, the confirmation of *experience*. But experience, though an instructive guide, is apt to be a costly one. In the present instance, in the compass of ten or eleven years, it had cost, four or five years ago, upwards of a million:* by this time little less, probably, than a million and a half; of which near the odd million (as your Lordship will see) might have been saved, and with it the shame of a project, involving in its very essence the impossibility of success, saved, together with lives by hundreds, and crimes and immoralities without account, if antecedently to the experiment, in addition to the tongue of an orator, there had been an eye at the treasury, capable of reading in the book of human nature.

Under a system of suppression persevered in, spite of parliamentary warnings,† for these ten years,‡ from what source shall the testimony of experience be collected? Happily a more competent, a more instructive, a more authentic source: a source, in any point of view, more valuable, could scarce have been wished for, than that which the public, during the sleep of superior office, has been put in possession of by an eye-witness—the professed moral historiographer of the colony, the late Judge Advocate, *Captain Collins*. Nor yet simply the historiographer, but the panegyrist, the professed panegyrist likewise: a character which, when accompanied, as in this instance, with that candour and those internal marks of correct veracity with which it is so rare for it to be accompanied, renders the testimony, in this point of view, more than doubly valuable.

Fortunate it is, that whether from firmness in one quarter, or from negligence in another, the principle of suppression has passed by a mass of information that renders its exertions elsewhere of little use. The work is dedicated, and dedicated by permission, to the late Lord Sydney: in great letters, the title of "Patron of the work," as well as that of "Originator of the plan of Colonization," are conferred upon the noble lord. "To your patriotism," says the panegyrist to the patron, "the plan presented a prospect of *political* and *commercial* advantage." "The following pages," continues the worthy magistrate, with perfect simplicity and unquestionable truth, "will serve to evince with how much wisdom the measure was suggested and conducted; with what beneficial effects its progress has been attended; and what future benefits the parent country may with confidence anticipate."

In the preface, he concludes with acknowledging himself to be "anxiously solicitous to obtain" for the colony "the candid consideration of his countrymen; among whom," he says, "it has been painful to him to remark a disposition too prevalent for regarding it with odium and disgust."...... "Its utility consists," according to him, in, that "besides the circumstance of its freeing the mother country from the depraved branches of her offspring, in some instances *reforming* their dispositions, and in all cases rendering their *labour* and talents *conducive* to the public good, it may prove a valuable *nursery* to our *East India* possessions for *soldiers* and *seamen*." ......He speaks of a time in which "he began to think......that some account of the gradual reformation of such flagitious characters, as had by many" (he very candidly adds, "and those not illiberal") "persons in this country been considered as past the probability of amendment, might not be unacceptable." So

* £1,037,230.—28th Finance Report, 26th June 1798, p. 22.

† See 28th Report of the Committee of Finance, anno 1798.

‡ The last official communications made to the House of Commons on the subject of New South Wales, bear date in 1792.

far the magistrate historian: as to the flagitious characters, there is no want of them; but as to any evidence of their reformation, here and there a white blackamoor excepted, it is all of it in his wishes—there is none of it in his book. How far the general conceptions, thus conveyed in the preface, are in agreement with the rigid truth of things, will appear from the more specific statements collected a little farther on, at the bottom of the page. For these little inadvertencies, if such they should prove, the interests of the public service are but so much the more in the author's debt; since, if confining himself to the province for which he appears so eminently qualified, the superior province of the historian, he had left the task of the panegyrist to inferior hands, the satisfaction which, as matters stand, I flatter myself with being able to afford your Lordship on this ground, might have been less complete.

Of passages to the like effect with those which are here transcribed, enough might have been found to fill a volume. Those which are given here are selected as exhibiting the condition of the colony at the latest points of time; this being the stage at which the reforming tendency of the discipline, had it possessed any such tendency, had had the longest time to operate. General statements and observations are moreover preferred to histories of individual criminals, or crimes, partly out of deference to the logical rule, *syllogizari non est ex particulari*—partly because the particular anecdotes of this kind, being the materials of which a very considerable part of that large but interesting work are composed, could not possibly have been comprised within the limits prescribed by the object of this address.

The persons spoken of as *reformed*, are for the most part spoken of by name: in number they would scarcely, I think, be found to exceed a score—certainly not double that number, even including the many backsliders. The number of the unreformed is to that of these reformed characters, as a hundred or so to one. A bettermost sort of rogue—a man in whom on any occasion the smallest degree of confidence can be reposed, appears in that country to be beyond comparison a scarcer animal than a *black swan*. One thing the historian is clear in, that as to all but the few *lusus naturæ* thus distinguished, the longer they stay in that scene of intended reformation, and the more they are left to themselves (that is, the more entirely they are left to the separate influence of the pure principle of *colonization*, without any admixture of its discarded rival, the principle of *inspection*,) the worse they are; those who have the yoke of bondage still about their necks being a sort of half honest, half sober, half provident profligates, in comparison of those called settlers whose term is at an end.*

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* I. *Improbity, uncorrected and incorrigible.*

No. 1, p. 382. *July* 1794.—"An honest servant was in this country an invaluable treasure: we were compelled to take them, as chance should direct, from among the common herd; and if any one was found who had some remains of principle in him, he was sure to be soon corrupted by the vice which everywhere surrounded him."

No. 2, p. 419. *June* 1795.—"With very few exceptions, it was impossible to select from among the prisoners, or those who had been such, any who would feel an honest interest in executing the service in which they were employed. They would pilfer half the grain entrusted to their care for the cattle; they would lead them into the woods for pasturage, and there leave them, until obliged to conduct them in; they would neither clean them nor themselves. Indolent, and by long habit worthless, no dependence could be placed on them. In every instance they endeavoured to circumvent."

No. 3, p. 445. *December* 1795.—"At Sydney, another attempt being made to steal a cask of pork from the pile of provisions which stood before the storehouse, the whole was removed into one of the old marine barracks. The full ration of salt provisions being issued to every one, it was difficult to conceive what could be the inducement to these frequent and wanton attacks on the provisions, whenever necessity compelled the commissary to trust a quantity without the store. Perhaps, however, it was to gratify that strong propensity to thieving, which could not suffer an opportunity of exercising their talents to pass, or to furnish them with means of indulging in the baneful vice of gaming."

No. 4, p. 473. *April* 1796.—"No punishment, however exemplary, no reward however great, could operate on the minds of these unthinking people."

II. *Improvidence, extreme and universal.*

No. 1, p. 414. *April* 1795.—"The farmers now began everywhere putting their wheat into the ground, except at the river, where they had scarce made any preparations, consuming their time and substance in drinking and rioting, and trusting to the extreme fertility of the soil, which they declared would produce an ample crop at any time, without much labour."

No. 2, p. 435. *November* 1795.—"Instead of completing in a few hours the whole labour which was required of a man for the day, the convicts were now to work the whole day, with the intermission of two hours and a half of rest. Many advantages were gained by this regulation;—among which, not the least was the diminution of idle time which the prisoners before had, and which, emphatically terming *their own time*, they applied as they chose, some industriously, but by far the greater part in improper pursuits, as gaming, drinking, and stealing."

No. 3, p. 458. *February* 1796.—"They [the settlers] seldom or never showed the smallest disposition to assist each other. Indolent and improvident, even for their own safety and interest, they in general neglected the means by which either could be secured."

No. 4, p. 467. *March* 1796.—"At the Hawkesbury, *where alone any prospect of agricultural*

Reformation being the topic at present on the carpet, it is to this that the present string of extracts will therefore be confined. The other topics glanced at in the passages quoted out of Mr. Collins' preface, belong to the head of *incapacitation* — I mean with reference to the commission of fresh offences within the limits of the mother country: to *incapacitation*, I say, and *economy*. The merits of the plan in relation to these objects, will be considered apart, under their respective heads.

Such was the state of the "improved colony" in September 1796, at the termination of the period comprised in the first and already published history of Mr. Collins. A continuation from the same able and candid hand is

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advantages was to be found, the settlers were immersed in intoxication: riot and madness marked their conduct; and this was to be attributed to the spirits that, in defiance of every precaution, found their way thither"

No. 5, p. 470. *April* 1796.—"In the beginning of this month, a very liberal allowance of slops were served to the prisoners, male and female. As it had been too much the practice for these people to sell the clothing they received from government as soon as it was issued to them, the governor on this occasion gave it out in public orders, that whenever it should be proved that any person had either sold or otherwise made away with any of the articles then issued, the buyer, or seller, or receiver thereof, would both subject themselves to corporal or other punishment. *Orders, however, had never been known to have much weight with these people.*"

No. 6, p. 482. *June* 1796.—"The settlers at the different districts, and particularly those at the Hawkesbury, had long been supposed to be considerably in debt; and it was suspected that their crops for two or more seasons to come were pledged to pay these debts."

No. 7, p. 483. *June* 1796.—"The gentlemen who conducted the inquiry found most of the settlers there [the Hawkesbury] oftener employed in carousing in the fronts of their houses, than in labouring themselves, or in superintending the labour of their servants in their grounds."

No. 8, p. 483. *June* 1796.—"The practice of purchasing the crops of the settlers for spirits, had too long prevailed in the settlement;...... it was not possible that a farmer, who should be idle enough to throw away the labour of twelve months for the gratification of a few gallons of poisonous spirits, could expect to thrive."

No. 9, p. 492. *August* 1796.—"They [the settlers] were in general of such a thoughtless, worthless description, that even this indulgence might induce them to be, if possible, more worthless and thoughtless than before; as, to use their own expression, they had now to work for a dead horse." The indulgence consisted in the being suffered to give assignments on their crops then in the ground, to save themselves from imprisonment for debt.

III. *The longer the application of the supposed cause of reformation, the worse the effect.*

No. 1, p. 358. *March* 1794.—"Had the *settlers*, with only a common share of honesty, returned the wheat which they received from government to sow their grounds the last season, the reproach which they drew upon themselves by not stepping forward at this moment to assist government, would not have been incurred; but though to an individual they all knew the anxiety which every one felt for the preservation of the seed-wheat, yet when applied to, and told (in addition to the sum of 10s. a-bushel) that any quantity which they might choose to put into the store should be brought from their farms without any expense of carriage to them, they all or nearly all pleaded an insufficiency to crop their ground for the ensuing season; a plea that was well known to be made without a shadow of truth."

No. 2, p. 394. *October* 1794.—"*The presence of some person with authority* was become absolutely necessary among those settlers, who finding themselves free from bondage, instantly conceived that they were above all restrictions; and *being without any internal regulations*, irregularities of the worst kind might be expected to happen."

No. 3, p. 432.—It appears likewise by this muster, that one hundred and seventy-nine persons subsisted themselves independent of the public stores, and resided in this town. To many of these, as well as to the servants of settlers, were to be attributed the offences that were daily heard of: they were the greatest nuisances we had to complain of."

No. 4, p. 471. *April* 1796.—"At the Hawkesbury, the corn-store was broken into, and a quantity of wheat and other articles stolen; and two people were apprehended for robbing the deputy-surveyor's fowl-house."

No. 5, p. 471. *April* 1796.—"All these depredations were chiefly committed by those public nuisances, the people of the stores."

No. 6, p. 473. *April* 1796.—"The Hawkesbury was the refuge of all the Sydney rogues when in danger of being apprehended."

No. 7, p. 474. *May* 1796.—"Daily experience proved that those people whose sentences of transportation had expired, were greater evils than the convicts themselves...... Many were known to withdraw themselves from labour and the provision-store on the day of their servitude ceasing. On their being apprehended, punished for a breach of order, and ordered again to labour, they seized the first opportunity of running away, taking either to the woods to subsist by depredations, or to the shelter which the Hawkesbury settlers afforded to every vagabond that asked it. By these people (we were well convinced) every theft was committed."

Thus far Captain Collins. The corruption which it thus appears was so general among the settlers, *i. e.* among those whose terms of bondage were expired, who by that means had recovered a degree of independence, and had withdrawn themselves more completely out of the reach of every inspecting eye, had (as might have been expected) this independence, this exemption from inspection for its cause. For so late as in August 1792, a time when the residence of those who had arrived first in the colony had not been so long as five years, and when few had as yet regained their liberty, and none had been in possession of it for any length of time, "with very few exceptions," says Captain Collins, p. 210, the uniform good behaviour of the convicts was still "to be commended."

promised (I see) by the public prints, for a time which may perhaps have arrived before these pages of mine have reached your Lordship's eye.

What subsequent improvements the colony may have received in relation to this same head, is a point on which I cannot pretend to any information from that source.*

In the mean time, so far as concerns general results, which are all your Lordship would endure to see crowded into this place, accident has put into my hands two testimonies of no mean account. In one respect they have the advantage of any which even your Lordship's authority could command: they are in each instance the uninfluenced and undisguised effusions of the pen, committed to paper without the idea of being made subservient to this or any other public purpose. They wear no factitious colours; neither of that flattering cast which is so apt to give a tinge to the smallest piece of paper that can ever find its way from any such quarter to your Lordship's office, nor yet of the opposite cast.

The first is an extract of a letter from Captain Hunter, at that time Governor of the colony. The date of it is the 20th of May 1799: about two and a half years had been at that time added to the experience reported by Captain Collins: —

"*Sydney, New South Wales,*
"*20th May* 1799.

"The fatigue to which the Governor of this territory must submit, both mental and corporeal, is far beyond any idea you can have of the nature of his duty rendering such fatigue necessary in the Commander in chief.

"My former knowledge and acquaintance with this country encouraged me in a hope, which, however, in some respects proved delusive, that I should, with ease to myself, and with proper effect and advantage to the public, have been able to manage all the duties of my office. But I had not been long entered upon it, before I was awakened from that dream of comfort and satisfaction, the prospect of which I had so vainly indulged. The seeds of those vexations which had so disappointed me, had been sown for a very considerable time, and being rather of a prolific nature amongst such people, had gained so much strength, that it will require immense labour to grub them up by the root.

"I have persisted in my attempt to that end, and mean not to change my system; which, be assured, from being calculated to lay restraints upon every species of vice and immorality, cannot amongst such characters be a very popular one: that, however, will be a matter of no immediate concern with me, if I succeed only in a small degree to check the growing profligacy and abandoned turn of the lower classes of the people.

"This is a good *country*, and will do well, but its progress in improvement would be considerably hastened, *could government be prevailed upon not to overstock us with the worst description of characters;* for, *whilst the mass of the people continue to be of that class*, our difficulties will ever be very considerable: *the industrious and well-disposed become a continual prey to the idle and worthless.*"

It was not to myself that this letter was addressed, neither had I then, nor have I since, had the honour of any personal acquaintance with the gentleman from whom it came. It was a letter perfectly spontaneous, addressed to a person with whom he had never before had any written intercourse.

Your Lordship sees what it is the governor of the improved colony, down to that time, could find to speak of — great labours, no successes. Could any thing have been found that could have been made to wear the appearance, though it were but of a half success, would it have been passed unnoticed? Meantime, if in the line of *moral* improvement the governor made such small advance, it was not (if the governor himself, or the judge advocate is to be believed) for want of trying it.

The country (your Lordship sees) is a "*good country;*" but the word *good* might lead to conclusions rather wide from truth, if a distinction were not to be made between God Almighty's works and * * * * *'s. To its Almighty Creator is it indebted for those capabilities which neither neglect nor mismanagement can deprive it of: the use made of them had been depending upon * * * * *. Your Lordship sees upon what condition its chance of improvement depended — (in the opinion of the governor at least, upon whom everything had been depending under * * * *;) upon its not being applied to the chief, if not the only purpose for which it had been established, and for which it continues to be kept up: the purpose, with reference to which, according to * * * * *, it was so much superior to everything else By the

* Since the above paragraph was written, the public has been put in possession of the promised information; and surely never did the deductions of reason receive a more ample confirmation from experience, than has been afforded in the present instance by the actual condition of the "improved" colony, as exhibited in this second volume, dedicated by permission to the noble lord in whose hands the management of it had by that time been reposed. Extracts in continuation of those given from the first volume are intended to accompany this address.

To keep clear of all possible imputation of intrigue, I abstained purposely from every endeavour to open any sort of communication, direct or indirect, with the respectable historian to whose ulterior testimony I was looking forward with such well-grounded confidence.

governor, after all the labours of which he speaks so feelingly, the nature of things could not be changed. While those who have become bad for want of inspection, remain without any inspection,* (as they must do there, such of them as are not in jail there,†) they will remain as bad as ever, or rather, according to the estimate given of them as above by the late chief magistrate, become still worse.

The next article, from a source than which that distant region never furnished a more respectable one, bears date the 7th of October 1800. The part that applies to the present purpose, comes after a paragraph of considerably greater length, which I may have occasion to submit to your Lordship under the head of *Economy*:—

"Governor King, who has the command, will make many regulations, as far as is in his power, for the security and advantage of the colony; and likewise pay some attention to the morals and instruction of the rising generation, *to which none has been hitherto given*; for certainly, if we ever hope to see worth or honesty in this settlement, we must look to *them for it*, and not the *present* degenerate race."

What your Lordship might not otherwise have supposed, this letter is from a female pen, as well as to a female eye; not a word more in it that bears reference to anything that can be called *politics*. Mere accident threw it into my hands. For authentication sake, designation will (I suppose) be regarded as indispensable; but where that sex is concerned, the most reserved mode that can be thought of, is the most respectful and the

* I. *General necessity of Inspection.*

No. 1, p. 63. *March* 1789.—"Being advanced in years, he (the person entrusted with the direction of the convicts at Rose Hill) was found inadequate to the task of managing and controuling the people who were under his care, the most of whom were always inventing plausible excuses for absence from labour, or for their neglect of it while under his eye."

No. 2, p. 400. *December* 1794.—"Our settlements had now become so extensive, that orders did not so readily find their way to the settlers, as runaways and vagrants, who never failed of finding employment among them, particularly among those at the river."

† II. *Necessity of Jails and Jail Gangs for closer Inspection.*

No. 1, p. 383. *July* 1794.—"During this month a building, consisting of four cells for prisoners, was added to the guard-house on the east side of the Cove. This had long been wanted; and the whole being now inclosed with a strong paling, some advantage was expected to be derived from confinement adopted only as a punishment."

No. 2, p. 402. *December* 1794.—"A jail-gang was also ordered to be established at Trongabbe, for the employment and punishment of all bad and suspicious characters."

If I understand this *jail-gang* right, it was composed of a set of workmen, working not within the walls of a jail (a place in which there could hardly be any work to be done;) but though in an unconfined space, an uninclosed field, yet under the close inspection of persons, set over them as guards, with or without the addition of fetters, to keep them from running away.

No. 3, p. 487. *July* 1796.—"The town of Sydney was shortly after filled with people from the different settlements, who came to the judge-advocate for certificates of their having served their respective sentences. Among these were many who had run away from public labour before their time had expired; some who had escaped from confinement with crimes yet unpunished hanging over their heads; and some who, being for life, appeared by names different from those by which they were commonly known in the settlement. By the activity of the watchmen, and a minute investigation of the necessary books and papers, they were *in general* detected in the imposition, and were immediately sent to hard labour in the town and *jail-gangs*.

"To the latter of these gangs, additions were every day making; scarcely a day or a single night passed, but some enormity was committed or attempted, either on the property or persons of individuals."

No. 4, p. 493. *August* 1796.—"The *jail-gang* at this time, notwithstanding the examples which had been made, consisted of upwards of five and twenty persons, and many of the female prisoners were found to be every whit as infamous as the men."

To crown the whole, and that nothing might be wanting that could help to demonstrate the complete inefficacy and inutility of everything that is peculiar to the penal colonization system, one of its latest improvements has been the importation of the *hulk* system from the Thames. In August 1801, the Supply (we are informed by Lieutenant-Colonel Collins, in the continuation of his History) "was fitting up as a *hulk* to receive such convicts as were incorrigible." ii. 330.

To avoid employing *prisons* and *hulks* at home, expeditions upon expeditions are fitted out to employ convicts in farming at the antipodes. In the course of a few years, a discovery is made, that drinking is preferred to labour, and that nothing is to be done without *hulks* and *prisons*, even *there*, though in a situation in which profitable labour under confinement is impossible; and it is this combination of particular forced idleness, with universal unbridled drunkenness, that is given not only as an "improved" system, but a system to such a degree improved, as to justify the proscription of a system of sobriety and industry that would have been carried on at home at a fraction of the expense.

At this time, at the expense of £3954, the colony had been put in possession of what is called "*the county gaol*," a convenient sort of building, which besides that, its standing use, serves occasionally as a bonfire. The same gaol, the Sydney gaol, (metaphysical discussion about identity apart) had served once in that capacity already, as well as another at Paramatta. [ii. Collins, p. 197, 276, 331.] The country is particularly favourable to such exhibitions. Things take fire there of themselves [ii. Collins, p. 72;] *a fortiori*, with a little assistance.

best.* Such was the state of this "improved," and ever-improving colony, with the benefit of at least a year's improvements, more than —— and —— could as yet have heard of at the time (I mean July 1800) when the idea of "relinquishing" the penitentiary system, in consideration of the superiority of their improved colonial system, was first declared in black and white, after having been determined *in petto* for a length of time unknown to me. A year's improvements more, and still——and——did not know that there were children there, or if there were, that they were worth saving from the gallows.

"But have not colonies," says your Lordship, "has not transportation to those colonies been a source of good, and even in this particular line? Have not reformation and honest industry been among the experienced fruits of it?" Yes, my Lord, where the bulk of the population has been ready found and composed of men of thrift and probity—where the mass of the population being formed, the children of improvidence have been dropped in in driblets, absorbed and assimilated as they dropped in, by the predominant mass of the population into which they were received. In America, a master waiting to take charge of the delinquent as soon as landed — that employer a man of thrift — one of a neighbourhood all composed of men of thrift, all ready to make common cause against a fugitive or refractory bondsman: the bondsmen not collected together in any one place in numbers, but distributed among a number of families, one or a few at most in each. Such was a sort of society in which each convict would have to serve and be trained up in unremitting habits of unavoidable industry during his bondage: of the same cast was the society in which, if he settled at all in that quarter of the world, he would have to settle upon his restoration to independence.

Thus it was in *America* — thus it was with the convict consigned to any one of those *old established* colonies. How was it in *New South Wales?* The native inhabitants a set of brutes in human shape — the very dregs even of savage life — a species of society beyond comparison less favourable to colonization than utter solitude; a set of living nuisances, prepared at all times for all sorts of mischief: for plundering the industrious;† for quarrelling with the quarrelsome;‡ for affording harbour to the fugitive.‖ Other inhabitants, none but the very profligates themselves, who were thus sent by thousands from British gaols, to be turned loose to mix with one another in this desert; together with the few taskmasters that were to set them to work in the open wilderness, and the military men who were sent out with them in large but still unequal numbers, to help to keep within bounds the mischief they would be sure to occupy themselves with when thus let loose. Excepting these military guardians, whom, the endeavour was, though a vain one, to keep from mixing with their wards, it was of the very dregs of society — of men unfit to live at large in society — of men proved to be such by experience, and those collected together in multitudes, that the mass of society in this colony has hitherto been, was even meant to be, and for some generations at least would, for any rational ground that the founders could have for expecting the contrary, continue to be composed.

To an eye incapable of seeing further into things than their names, the two above contrasted scenes of existence were indeed the same, since both were *colonies;* but in themselves no two measures could in this respect be more different than transportation of convicts in retail, into a colony ready formed by honest men, and transportation of convicts by wholesale, into a colony not formed, but to be formed, and to be formed of convicts.

"But may not a set of regularly honest settlers be collected thither by degrees? and thus, with the addition of the improved characters, how few soever at first among the emancipated convicts, accumulate in time into whatever majority may be requisite to form the basis of an industrious and thriving population?" Possibly, my Lord; the bounds of possibility are wide: not even very improbably, so it be in some future century; in the present one, hardly. For what is there that should draw thither men of thrift and capital? — draw them to a place which, except a part of the stock of necessaries for its own inhabitants, neither does produce, nor presents any the smallest indication of being about to produce anything that will not be at the very time produced in other places, as well as imported into Britain from other places at a much cheaper rate — to a place in which, in the meantime, "*the industrious and well disposed*" will (as the late chief magistrate and the late governor seem to agree in observing) "*become a continual prey to the idle and worthless.*"

Loud and frequent have been the complaints (nor altogether, I suppose, without truth) about *inveigling* men (as it is called) to North America; *cruel* and *fraudulent* are the epithets given to the practice: to North America, where if manners are not, upon the whole, so amiable, yet crimes of all sorts

* Oblique as it was when the announced designation presented itself in print, my resolution failed me, and I expunged it. The sex of the writer, and the fidelity of the extract, being admitted, whatever claim to confidence can be given by situation will be found stamped upon the style.

† i. Collins, 444, 458, 459; ii. 15, 31, 33, 56, 204.

‡ Ibid. 30, 415; ii. 281.

‖ Ibid. 459; ii. 84, 40, 59, 299.

probably crimes of depredation certainly, are even more rare than here: to America, where a human being not employed in industry, productive or professional at least, is scarcely to be found. If to invite men to such a country be an act of fraud and cruelty, what must the act of that man be, who should seek to engage an honest settler to sink his capital, his industry, and his prospects, in New South Wales?

But of the prospect of advantageous produce from this as well as all other sources, more will come to be said presently, under the head of *economy*, to which it more immediately belongs.

III. Third object or end in view—*Incapacitation;* rendering a man incapable of committing offences of the description in question any more: understand in the present instance *in the same place*—the only place (it should seem) that was considered as worth caring about in this view.

In this object was seated, to all appearance, the strong hold and main dependence of the system: of reformation it would (I dare believe) have been acknowledged in a whisper there was nothing meant but the form: it was a mere make-believe. In the expedient employed for rendering it impossible for a man to do any more such mischief in the only spot in the world worth thinking about, consisted the sum and substance of the new system of compulsive colonization.

This contrivance was as firmly laid in school-logic as could be wished. Mischievously or otherwise, for *a body to act in a place*, it must be there. Keep a man in New South Wales, or anywhere else out of Britain, for a given time: he will neither pick a pocket, nor break into a house, nor present a pistol to a passenger, on any spot of British ground within that time.

Depredation, though committed out of Britain, would indeed not the less be depredation; but happily for our statesmen, here came in another rule of logic to their aid. *Things not apparent, and things not existing, belong to the same account;* the depredation and all other kinds of mischief and vice not making their *appearance*—that is, not here in Britain—it is the same thing as if there were none. Of the aggregate mass of his Majesty's subjects, good, bad, and indifferent, taken together, such as remained in this and the next island constituted, according to this mode of taking stock, the only articles that had any pretensions to a place in the inventory. Those who were to be sent out of it belonged neither to the list of souls to be saved, nor to the list of moral beings. On these principles, how the people thus sent thither behaved while there, was a point which, so long as they did but stay *there*, or, at any rate, did not come back *here*, was not worth thinking about. Such was the religion, such the morality, which presided over the design and execution of the picture of industry and reformation in New South Wales.

Admitting that immorality and misery are rendered matters of indifference by being shifted from place to place, and that mischief of all kinds, so it be excluded from certain parts of his Majesty's dominions, may be regarded as annihilated—two points remain still to be considered:

One is, in what degree the contrivance thus hit upon for securing the country in question, against the future presence of the individuals in question, is productive of that effect?

The other is, how far the advantage thus purchased is consistent with the principles of law and justice?

The answer, not to keep your Lordship in suspense, will, I believe, be found to be, that so far as the object is attained, it is attained at the expense of justice; but that even with that expense, the degree in which it is attained is very imperfect: imperfect from the first, and, in the nature of things, destined to become more and more so, the longer the establishment continues; and that, upon the whole, the *shame of inefficacy* is, in the very nature of the project, added to the *odium of injustice*.

The nature of the expedient being to be stated in the first place, before the efficacy of it can be examined into, the topic of justice will demand, on this as well as other accounts, the precedence. A word or two in the way of history is on this occasion unavoidable.

Transplantation to the colonies, a measure employed for the first time (at least under authority at this time reputed legal) soon after the Restoration,* is a mode of punishment which in lieu of, or in addition to, the other punishments annexed to offences comprised under the unfathomable and inexpressive appellation of *felonies*, extended itself gradually into use, so long as the now independent States of America remained upon the list of British colonies. This, like other *chronical* punishments, being divisible *ad libitum* into portions of all lengths, different lengths, adapted to the supposed exigency of the different cases of delinquency, have on different occasions, with great care and precision, been marked out: seven years, fourteen years, and for life: the length beyond comparison the most common, seven years: to say nothing of other lengths, not without example, such as terms between 7 and 14 years, and between 0 and 7 years. The statute in which the pains taken about the measurement of these lots are more conspicuous

* 13 & 14 Ch. II. c. 1, § 2; c. 12, § 23.

(I believe) than in any other, is a statute of the present reign, the statute of 1779;* the original penitentiary act — one of the two acts, which in a letter that will probably be one day presented in a more particular manner to your Lordship's notice, —— declares himself to have "*examined*" and "*understood the object of.*" In this statute, the several gradations of this species of punishment, or those of them at least which are in use, are brought together; and a sort of system of equivalence is established between the several degrees of *this* species of *chronical* punishment and a set of corresponding degrees, in three corresponding scales of so many *other* species of *chronical* punishment: confinement in the *hulks*, confinement in the *then* intended *national* and definitive *penitentiary-houses*, and confinement in the then existing *gaols*, in their destined character of so many local and temporary substitutes to those general penitentiary-houses.

This punishment, which while British America continued the scene of it, had fulfilled the ends of punishment in some points, failed in others. To the primary object, that of *example*, it was most obviously and incurably incompetent. Unequal in its essence, rendered still more unequal by its accidental concomitants, it was to one man as bad as death, to another a party of pleasure. By an irregularly applied, as well as unexplicitly declared distinction, on most individuals it imposed the additional yoke of *bondage;* others it left in possession of *independence.* To any one who had proposed to himself a spontaneous emigration to the same place, it presented a license for practising with impunity such offences as would send him there. So far was pure incongruity. With reference to the two other objects, *reformation* and *incapacitation*, it proved efficacious or inefficacious according to contingencies — contingencies altogether out of the thought as well as view and influence, not only of those *to* whom it was administered, but of those *by* whom it was administered, as well as of those by whom it was *ordained.* In some instances a man became in a greater or a less degree reformed; and in those instances the mother country commonly saw no more of him: in others, he remained unreformed; and in those she was sure to receive him back.†

Reformation is a very complex object: thought and contrivance are necessary to the

* 19 Geo. III. c. 74.

† Under the *old* transportation system, all this inequality was the result of the course taken for ridding the country of these its obnoxious inmates. Powers being given for the purpose by parliament, they were made over by government to a contractor, who, for the profit to be made by selling their services, for the penal term, to a master in America, engaged to convey them to the destined scene of banishment, or at least to convey them out of the country (the mother country) from which they were to be expelled. Taking the punishment thus upon the face of the letter of the law, the effect of it would be in all cases alike — to add to the fundamental and introductory part of it, *banishment*, the ulterior and perfectly distinct punishment of *bondage* — banishment from the mother country, bondage to be endured in the country to which the convict was to be expelled. Such being in all cases the effect in appearance, such also would it in general be in practice; because, in general, the poverty of the convict precluding him from purchasing any indulgence, the price paid for his services by a stranger in America was the only source of profit to the first purchaser — I mean, the merchant who in Great Britain insured the conveyance of the convict to that distant quarter of the globe. But a very moderate sum of money was sufficient to enable a man to exempt himself from this most afflictive part of the punishment; for wherever it happened that through the medium of a friend or otherwise he could bid more for himself than would be bidden for him by a stranger, liberty thereupon, of course, took place of bondage. Poverty, therefore, rather than the crime of which a man was convicted, was the offence of which the bondage was the punishment; and, so far as the amount of the depredation is to be taken as a measure of the magnitude of the crime, the greater the crime, the better the chance which the criminal would in this way give himself for escaping the severer part of his lot. The profession of a receiver of stolen goods — a connexion with an opulent and successful gang — were among the circumstances that would in general secure to a man an exemption from this most salutary as well as afflictive part of the penal discipline.

Under the *new* transportation system — the system of transportation to the land of *general* bondage — this inequality received a pretty effectual correction, far as the nature of the punishment was from being improved, and the condition of the convict population from being meliorated, upon the whole. The person on whom the lot of the convict, in this respect, was made to depend, was no longer in any instance a friend or trustee converting the nominal bondage into real liberty: he was in every instance one and the same person — the general agent of the crown, the governor of the colony, who, with regal powers, dealt out justice or mercy, in each instance, according to the joint measure of his own humanity and his own wisdom. Bondage was not now to be bought off for money; at the same time, it was but natural that in the case of an individual whose education and mode of life had habitually exempted him from ordinary labour, a proportionate degree of indulgence should be manifested, in respect of the quality or quantity of his task. So far, so good. On the other hand, the instances to which this improvement extended were but few and accidental; while, in point of industry, sobriety, and other features of moral amelioration, the condition of the many was, by the causes already stated, rendered worse, not better, by the change. Under the old transportation system, the person on whom the condition of the convict depended — a master employing him for his own (the master's) benefit — would stand engaged, by the tie of personal interest, to extract from him as much labour as could be ex-

pursuit of it. *Local exclusion* is a very simple object: it may be aimed at almost without thought. In the one case, if any thing be effected, it must be by mind operating on mind

tracted,—to watch over his conduct, in that and every other respect, with the most uninterrupted vigilance,—and, upon the whole, in respect of quality as well as quantity of work, to give the utmost value to his service. Under this new transportation system, the management being mere *trust* management—management under the general orders of the governor, conducted for the benefit of the public purse—management, therefore, without interest, at least without pecuniary interest, as well as without any other than a very loose inspection—the effect of it was in this respect such as from the nature of man might be expected. By the late chief magistrate of the colony, the average amount of a day's labour was estimated (as will be seen further on) at not more than a third of what would have been rendered by a free labourer working on the ordinary terms.[a] True it is, that a considerable part of the convict population has all along been distributed among the officers, to be employed by them for their own benefit; in which case it can scarce be doubted, but that in all points, and especially in that of industry, more attention was paid to the conduct of the convicts thus disposed of, than was or could be paid to such of them as were retained, on the footing above exhibited, in the public service. Still, however, in this case, the closeness of inspection would on many accounts fall short of that which under the old transportation system (the system of transportation to America) would have been generally kept up. In America, the masters becoming such by purchase would without exception be persons already engaged in habits of vigilance and industry. In a society composed of military men, a character of this sort could not reasonably be expected to be found equally prevalent. In America, the master's own choice had in every instance fixed him, and for life, in that employment for the purpose of which he took upon himself to purchase the interest in question in the convict's services. In New South Wales, the profession of the species of master in question is of the number of those which are embraced more frequently through disinclination than through any predilection for money-getting industry—thoughts and wishes pointing homewards the whole time—and the continuance of the situation, by which the demand for such compulsive service is afforded, short-lived and precarious. Service that was to be had for nothing would not naturally (it is true) in that situation, any more than in any other, be refused: but, on the other hand, neither does it seem reasonable to suppose, that in such circumstances any such advantage would, upon an average, be derived from it, as in America, under the old transportation system, would have been generally extracted by a purchasing master from the services of his purchased bondsman.

The emancipated convicts, under the name of *settlers*, constituted indeed another class of masters, who, under the authority of the governor, either on the same gratuitous terms as in the case of the officers, or for wages on the footing of a free contract, shared in a considerable proportion whatever benefit was to be reaped from the labour of their fellow-convicts during their respective penal terms in some instances, as well as in other instances after the expiration of those terms. But in the way of moral improvement, as well as steady industry, still less benefit (it is evident) was to be expected from this source than from the other. Accordingly, at the Hawkesbury settlement (in a passage which your Lordship has already seen, p. 467, anno 1796, stated by the late chief magistrate as the only one of all the settlements "where any prospects of agricultural advantage were to be found,") it is moreover stated (in another passage which your Lordship has also seen, p. 483,) that "the settlers were found oftener employed in carousing in the fronts of their houses, than in labouring themselves, or superintending the labour of their servants on their grounds."

Thus much as to the degree of pecuniary interest on the part of the master, and the quantity and quality of the effect it may be expected to have on the pecuniary value of the labour of the convict servant. But (setting aside rare and extreme cases, such as that of labour extorted in such excess as to shorten the thread of life) the moral interest of the convict bondsman, and the pecuniary interest of the purchasing master, will (we may venture to say) be found pretty exactly to coincide; since the more steadily a man's time and thoughts are occupied in profitable labour, even though the profit be not his own, the more effectually they will all along be diverted from all unlawful objects. The general consequence is, that while the fortune of the master is receiving improvement from the labour of the once criminal workman, the moral habits of the workman himself will in the same proportion be receiving improvement from the same cause.

Two circumstances—two disastrous circumstances—have in a greater or less degree been common to transportation-punishment, under both its forms: in point of comfort, the condition of each convict under and during the punishment has been matter of pure contingency; while, in point of morality, his reformation, depending upon the same unforseeable events, has been left alike to be the sport of fortune. In both respects, happiness and morality, his condition has been thrown altogether out of the view of every eye in the country, under the laws of which, the discipline such as it was, had been administered—of the legislature by which the species of punishment had been selected and allotted to the species of offence—of the judges and the executive government by whose authority the individual had been consigned to that species of punishment—of that public which has so important an interest in the efficacy of every punishment, as well in the way of reformation as in the way of example, not to mention the interest which, on the score of humanity, every community has in the well-being of the meanest of its members. Under the transportation system—under that system in both its forms—the state of the convict, in relation to all these essential points, was and is, under the former by *dispersion*, under the latter by *distance*, thrown as it were purposely into the shade. Under the panopticon system, and that alone, light—the clearest and the most uninterrupted light—takes place of all such darkness. Considered with a view to moral health, as well as to physical comfort, a Panopticon is a vast hospital; but an hospital of that

[a] II. Collins, p. 40.

although operations purely physical may (as I have had already occasion to observe) be among the means employed, and with assured efficacy, in that view. In the other case, body operating upon body is sufficient to the task. This observation may serve to explain the ground of whatever little portion of thought can possibly have been concerned, in the choice made of New South Wales. In a plan in other respects proper and adequate, simplicity is unquestionably a recommendation of no mean importance. But it will neither stand in lieu of *efficacy*, nor atone for *injustice*.

When, for persons of the description in question, the obtainment of the accustomed situations in America was found to be, or supposed to be, or said to be, no longer practicable, another spot came to be looked out for, and the spot chosen was this new discovered and pre-eminently distant region, that had been christened, or new christened, New South Wales.

The word *distant*, were it not for the appearance of affectation, should have stood in capitals. In it will be found not only the grand recommendation of the plan, but the only assignable or so much as imaginable property, which, though it were but for a moment, can have presented itself in that light. Of the several efficient causes of probable reformation to be looked out for in a colony, as having actually been afforded by the *old* colonies as above, not a single one could have been found existing anywhere in this new-found land. Existing demand for bondsmen—for bondsmen to be employed in separate families — in a ready-formed community composed of men of thrift — with an opportunity of settling in a society of the same complexion on the return of independence — conveyance thither at an inconsiderable expense, or without any expense; — all these requisites were altogether wanting, together with all others that can be imagined.* *Distance* — the indisputable attribute of this favourite spot — *distance*, the supposed mother of *security*, was the virtue which it is evident was regarded as making up for the absence of every other. Of this attribute it was seen to be possessed in a degree altogether beyond dispute. The moon was then, as it continues to be, inaccessible: upon earth there was no accessible spot more *distant* than New South Wales. The security that had been afforded by America in this respect, the security against the return of the expelled emigrants, had been but an incomplete one: why? because the *distance* was comparatively so small; means of communication accordingly so abundant. The security, promised in that same way by New South Wales, was the best possible: why? because the distance was the greatest possible; means of communication already established, none; and such as for this purpose would be to be established, would be to be established by government itself: consequently (it was taken for granted) would be altogether at the command of government. From such premises, the conclusion, true or false, was obvious enough: *Let a man once get there, we shall never be troubled with him any more.*

Setting aside law and justice, the expedient was at any rate a plausible one: and except the revolutionary *noyades* and *fusillades*, the Calcutta black-hole, and a few other such foreign devices, a remedy against living nuisances could hardly be more promising or more simple. But suppose for a moment any such considerations as those of *law* and *justice* to be entitled to a place in the account, surely never did *this* country witness an exercise of power more flagrantly reprehensible, more completely indefensible.

In the design of it, if this were really the design of it, it amounted to neither more nor less than the converting at one stroke all inferior degrees of the species of punishment in question, into the highest — all finite lengths into one infinite length. In its conception, the operation is simple enough: banishment for life — for so many years as a man shall live — is as easy to conceive as banishment for any other number of years, fixed or limited; more so than banishment in different lengths, for different numbers of years. But the effects of it upon the legal system, which it was thus sporting with, would take a volume to delineate. All the distinctions which, under this head, the statute-book affords in such numbers, between punishment and punish-

improved and hitherto unexampled description, in which, without prejudice to the management, and thereby to the efficacy of the regimen, the condition of the patient is at all times open to all eyes. In this home scene, neglect is as impossible, as any sufficient attention is in the distant one.

Among savages, when to a certain degree a man is sick in body, he is cast forth, and thought no more of. In a nation civilized in other respects, the same barbarity is still shown to this at least equally curable class of patients, in whose case the seat of disorder is in the mind. Not indeed to every division in this class. For patients labouring under insanity, known and characterized by that name, no man has yet prescribed a voyage to New South Wales. The inefficacy of such a prescription, however, could not be more complete in the case of that description of patients, than it has hitherto been, and from the nature of the case ever must be, in the instance of the other description to which it continues to be applied.

* I mean of course with reference to the only declared objects of the measure: for as to mere existence, requisites with relation to that object—such as *climate* affording sufficient warmth, and *earth* affording the usual choice of soil—these, however material in *other* points of view, were mere blanks with reference to the objects professed on this occasion to be aimed at.

ment — adjusted with so much care to so many corresponding distinctions, real or supposed, between guilt and guilt — all this elaborate pile of distinctions, which for near a century and a half the legislature had been employing itself in building up, was upon this plan to be undermined and levelled at one blast.

In the whole body of the law, if effects are regarded, and not mere *words*, where shall we find a feature that bears any the least resemblance to this case? I protest I know not. A punishment has been precisely fixed by law — fixed not in *species* only, but in *degree:* fixed thus by each particular law upon the species of delinquency, it has been fixed afterwards upon each individual delinquent by a sentence grounded upon that law. The fixation thus performed, there comes upon the back of it another punishment—a punishment of prodigiously greater magnitude—a punishment added by one knows not who, added by an invisible hand, added by the hand of power (for in default of literal designation we must resort perforce to figurative) — added by the hand of power, without a hearing, and to all appearance without thought. In truth, so oblique was the course by which the object was pursued, that no adequate idea of it can possibly be conveyed by any concise form of words: a description of it will be attempted a little further on.

For a measure of this stamp, in what quarter of the English law can a precedent be looked for with any prospect of success? One case there is, in which after a verdict of conviction and damages found by a jury, the court, if they they think fit, have it in their power to increase the damages. It is the case of *mayhem:* I mention it as the nearest case, though at so wide a distance. Even in that case, not an atom of suffering is imposed upon the injurer, that is not in the shape of compensation converted into enjoyment for the benefit of the party injured. But so strange is the institution to an English eye, so incongruous to the spirit and general tenor of English law, that this singular instance of an apparent extension of punishment or something like punishment, after sentence or what is equivalent to sentence, would scarcely have been thought of but for its singularity, having scarcely ever, within my memory, been brought to view by practice.

For a lot of punishment to be *cut down*, cut down by royal prerogative, from the length marked out by law, to a length short of that which has been marked out by law, is a case common enough — a case within every day's observation — a case but too common, were it not that in this quarter of the law, unhappily so loose and incongruous is the texture of it, as to render it matter of praise, perhaps even of merit, on the part of one of the three estates of the legislature, to make changes, even regular and habitual changes, in the work executed at former periods by the whole. Be this as it may, the case of rigour *short of the law* is in every day's experience. But of rigour *beyond the law*, this surely may be set down for the first (as I dare hope it will prove the last) example. When the work of mercy and lenity is performed as above by the king's prerogative, it is performed in retail — performed by a separate decision pronounced in each individual case. Where, by an abuse of the same sacred instrument (an abuse, the nature and progress of which may perhaps receive a more particular explanation in another place,) the work of *rigour* has been performed as here, it has been performed by *wholesale*; in a word, in the same summary and compendious style as that of the *noyades* and *fusillades* above mentioned.

In speaking of a *rigour beyond the law*, I must take the liberty of warning your Lordship against a wrong reading, which otherwise might have been suggested by preceding recollections. *Rigour* is the word here, not *vigour:* — not to vigour — not to anything like what is commonly understood by *force* — but rather to *fraud* — to the very opposite of open and manly force — belongs the credit of whatever is done in the way of *rigour* in the present instance.

"Oh but," I have heard it said, "whatever may here be done, the law remains unchanged; rights remain untouched; rights remain inviolate. Now, as before, so long only as a man's term of transportation continues, does his return to Britain stand prohibited: now, as before, the term ended, the prohibition is at an end. Let him come back then, if he choose it; nor, if he is able, is there any law to hinder him: no more law to hinder him, than if, in execution of his sentence, he had been conveyed to America, as in former times."

I answer, so far as actual prohibition is concerned, legality out of the question, the fact is not precisely so; but of this afterwards. Supposing it were so, the plea might indeed serve, if *words* alone were of any importance — if *effects*, and such in particular as consist in human suffering, were not worth notice. When laws are issued, to what end are they issued, but to that of producing certain effects? When a law is issued, prohibiting a man from coming into a certain place, to what end is it issued but to that of preventing him from being there?

In both cases—in the supposed case of prohibitive law, and in the actually exemplified case of a system of coercion applied some how or other without the intervention of a prohibitive law — the object aimed at is the same. In both cases, it is *prevention* — prevention of the return of the individual or in-

dividuals on whom sentence of banishment has been pronounced. In both cases, it is by the opposing of *obstacles* to the deprecated event, that the prevention of it is aimed at. Thus far the two cases run together: where then lies the difference? In the supposed case, the obstacles employed are of that sort which, in the very nature of the case, are at all times liable to be surmounted, and in experience are in fact but too frequently surmounted: mere threats, mere words, by means of which an influence is endeavoured to be exercised over the *will*. In the really existing case, the obstacles employed, supposing them actually applied, are, in the very nature of them, insurmountable: absence of the necessary means and instruments of self-conveyance. In the one case, it is the *will* only that is practised upon: in the other case, the very *power* is taken away, or endeavoured at least to be taken away. In short, for what reason is it that physical obstacles have thus been preferred to moral ones? why? but because those physical means were regarded as more sure. In both cases, so far as obstacles of any kind are opposed to the exercise of the obnoxious act, the right of doing it is infringed to every substantial purpose. In the case, where the obstacle is most powerful, so far is the right from not being infringed, that it is in this case surely that the infringement is most complete.

Suppose it a case between individual and individual. Let us borrow *Ugolino* for a moment from Dante and Sir Joshua. A strong man has thrown a weak man into a dungeon, turned the key upon him, and left him there to starve: not a syllable to forbid his eating, not a syllable to forbid his coming out. The wretch lives for a week or so, and then expires. Physical obstacles, which rendered it impossible for him to escape and live, are employed in preference to ineffective threats. What follows?—that while he lives, it is not false imprisonment? that when he dies, it is not murder? No; but that the imprisonment is so much the more rigorous, the murder so much the more barbarous.

In this *feigned* case, it was by the strong man that the weak man was forced into the cave of death. In the real case, it is by authority of the law, that men by hundreds and thousands have been forced into New South Wales. If in this but too *real* case, staying there for life, because return has, with this express view, been rendered impracticable—if, while thus kept there for life, their stay there is not to be imputed to those who, in that view, sent them thither—then, neither in the *feigned* case, is the death of the prisoner to be imputed to the man, whom no one I suppose that thinks of the case, will scruple to call his murderer.

The mode of proceeding chosen in the view of securing the proposed effect, was of a piece with the effect itself. Had an act of parliament been passed, abrogating *pro tanto* in the lump the whole system of the transportation laws, and declaring that, in future, in whatsoever case transportation should be provided, nominally for this or that term of years, in effect the banishment should be for life, the measure would have been a severe one: it would have worn the appearance of an inordinately severe, and not very well considered one; but still, in respect of the course pursued for the accomplishment of it, it would have been an unexceptionable one. For in this case, being to be established by the direct authority of the legislature, and in the express words of the legislature, it could not but have been submitted to the legislature, submitted in its own genuine shape and colour, and, in that shape and colour, passed through all stages and all forms.

Unexceptionable in the *mode*, unexceptionable in point of *form*, the measure would not have been the less exceptionable in point of *effect* and *substance*. So palpably exceptionable, that I almost fancy your Lordship rejecting it as incredible, and saying to me, "Why encumber the argument thus with improbabilities? why perplex it with extreme cases?"

My Lord, if this be not precisely what was done, at any rate, this and more, and worse (your Lordship has seen already,) was actually done: done—or at least, so far as this was the real design and object of the settlement, endeavoured to be done. To give a particular and precise delineation of the course that was taken for doing what was done, would be a digression here, and must be referred to another place. To speak in generals—what was done in this behalf, was done by administration, by a sort of *surprise*, not to say *fraud*, upon the legislature. By an act of 1779, the same by which parliament supposed itself to have established the penitentiary system—by this act, in a hasty clause suggested by the exigency of the moment, the system then regarded as the preferable one not being capable of taking effect for some time, power was given to change the *locus ad quem* in transportation, from the *quondam* colonies in America, to any other place "beyond the seas;"* less latitude not appearing sufficient to insure to the transportation system even that temporary continuance which was all that was then intended for it. The evident object of that act was, to continue that mode of punishment upon a footing as near as possible to that on which it had stood ever since it was first instituted. Observing the latitude given for this purpose in the act, the founders of New South Wales laid hold of it, and upon the strength of it changed

* 19 Geo. III. c. 74, § 1.

the real nature of the punishment, and placed it upon a footing as different from any footing on which it had ever stood before—as different from any that had been in contemplation of parliament,—in all essential particulars as widely different (your Lordship has seen) as possible. Of a measure, thus legal in form, thus illegal in spirit and in substance, one knows not well what account to give. It is and is not the act of the legislature. The *power* of parliament was applied to it: the *will* of parliament was *not* applied to it. Neither the will nor understanding of parliament had had any cognizance of what was done. Parliament was dealt with by administration, as a man would be dealt with by an attorney, who should give him a lease for life to sign and seal, telling him it was a lease for years.

True it is, that after the choice was made, and New South Wales was fixed upon — true it is that then, under colour of a clause in a later act,* but to the same effect, a fresh act was obtained from parliament, † an act of which the object, and even the sole object, was the foundation of this new colony. By *foundation*, I mean the doing all that was thought fit to be proposed to be done by parliament for that purpose, viz. the creation of powers for the organization of one *judicial court:* on the subject of *legislative power*, an inviolable silence being preserved, for reasons which I may have occasion to speak of in another place. But this fresh act, in which not a syllable was said of any of the existing transportation acts, nor of the virtual extension which the several transportation terms respectively created by them were destined to receive—this fresh act was but the produce of a fresh fraud of the same kind, coming upon the back of the former fraud, and committed in support of it. From the very tenor of the act, as well as from a variety of collateral circumstances relative to it, your Lordship will (I dare venture to say) see the allegation put out of doubt: the inquiry, I am inclined to think, will not be altogether an uninteresting one; but, as already intimated, it must wait for another place. What I acknowledge accordingly is, that the choice made of that situation has the authority of parliament for its sanction, and in so doing I acknowledge it to be *legal.* But what I assert and undertake to show is, that the mind of the legislature has never gone with it: and thence it is that, in speaking of it, I may here and there have suffered my pen to run on with a degree of freedom, such as, had I considered it as substantially the act of the legislature, my respect for so sacred an authority might scarce have permitted me to assume.

Thus it is, that for authorizing in express terms the conversion of all finite lengths of transportation-banishment into infinite, no act of parliament was in fact passed or intended to be passed: but what was intended, and in part accomplished, and this under colour of an act of parliament (viz. the act just mentioned) was, that the fate of the wretches in question should be exactly the same as if an act of parliament to that effect had really been passed. Judges were accordingly to continue, and have continued with the accustomed gravity, sentencing men to transportation for fourteen years, or for seven years, or for any number of years not greater than seven, or for any number of years between seven and fourteen (for thus stands the law in some cases,) understanding or not understanding, that under a sentence of transportation for seven years, the convict was to continue in a state of banishment from his native country — in a state of confinement within the limits of that unknown country— for the remainder of his life. Parliaments were to go on in the same strain, establishing the same distinction in words, and with the same determination on the part of the servants of the crown, not to suffer any of those distinctions to be carried into effect. In the case intended to be realized, and in the case above supposed, but rejected as too bad to be supposed, the indiscriminating rigour, the groundless oppression, are just the same: the difference is, and the only difference, that in the imaginary case, the rigour, the oppression, stands clear of fraud — in the actual case it is defiled by fraud, by fraud aggravated by a solemn mockery of the forms of justice: a fraud organized by the servants of the crown, and forced upon the judges, who have it not in their power to refuse the part they act in it.

Nor yet was it by a mere fraud—the fraud of conveying a man, under colour of an act which meant no such thing, to a place from which no prohibition (it was hoped) would be necessary to prevent his return: it was not in this simple way alone that measures were taken for that purpose. Positive orders your Lordship will see issued, addressed to men whose punishment was expired, prohibiting them from leaving the colony in express terms — orders issued in full and direct contempt of the several laws of partiament on which the punishment had been grounded. But of this in another place.

Nor is this all—for in this cluster of abuses was involved, at the outset of the business, the monstrous, and in this country almost unexampled iniquity of an *ex post facto* law: nor yet a mere *particular ex post facto law*, such as that which, under the name of *privilegium*, has been consigned by Cicero to infamy, but a general *ex post facto law:* a law of this most odious cast, established upon a

* 24 Geo. III. c. 56, § 1.
† 27 Geo. III. c. 2.

wide extending scale. At the outset, convicts were found by hundreds, lying under sentence of transportation, for terms of different limited lengths, from seven years or under, to fourteen years. In all these instances, to a punishment appointed according to law and by a legal sentence, was superadded, or at least endeavoured and thought to be superadded, a punishment of much greater magnitude, inflicted, or at least meant to be inflicted, silently and without sentence: a punishment for the remainder of life, superadded to a punishment for years.

If among the group of convicts whose sentence has consigned them to a hulk, so much as a single individual were to be confined by the hulk-keeper with or without an authority from a secretary of state, that secretary of state acting therein with or without an authority from the council board — if in this way a portion of punishment, though but for a month, were to be added to the length of punishment appointed by the law, what a sensation! what an outcry! Nor yet surely without cause. Here — not in one instance only, but in hundreds of instances at once — to a punishment, of from fourteen years down to one year or less, is superadded a punishment of the same kind for ninety-nine years (to express the duration by the phrase used by lawyers to express it,) *for ninety and nine years, if* in each instance the wretch *shall so long live.*

I do not mean to say (for the case is not exactly so) that in effect there is no difference at all, between the lot of him whose sentence is for seven years and that of him whose term of transportation is for life: no, not even supposing them both to remain for life in the common scene of their intended fate. *Transportation* is indeed the punishment named by the law in both cases: — transportation, *i. e.* banishment, and that, intended to continue for life, is thereupon the punishment they are alike doomed to in both cases. But to mark the distinction between the two lots, here comes in the necessity of taking a second glance at another abuse, which has been already touched upon, and for which the only apology that could ever have been made is, that it was an ancient one. *Transportation* is the word used alike for all transportable convicts in the act of parliament: *Transportation* is therefore (I take for granted) the word that has been used for all alike in the judicial sentence or order, in virtue of which, in execution of these acts, the convicts have been sent abroad. Yet somehow or other, so it has been in practice, that under the same provision in the act, and under a judicial sentence or order couched in the same terms, *transportation* has been (as your Lordship has seen) to one man, simple banishment; to another man, banishment aggravated by bondage: as if to men in general, and in particular to men of British blood, the difference between bondage and liberty were a matter not worth speaking about.

This being the case, as to such part of the suffering, as (in the cases of two convicts sentenced to different lengths of transportation) is imposed by the express appointment of the law (I mean the simple banishment,) the extension thus given, under the present system, by this clandestine act of power, is in both cases really the same: what difference there is, lies in a point overlooked by the law, overlooked from the very first, as not worthy of its notice. The banishment — I mean the simple banishment — the mere continuance in the destined scene of banishment, *is*, or at least is *hoped*, and, by all who can find anything to say for the measure, *expected* to be in both cases for life: the only part of the punishment that has a different termination in the two cases is the *bondage:* the accidental accompaniment which the law in its wisdom has never yet looked upon as worth mentioning or caring about.

The *bondage* does not receive, nor therefore was meant to receive, any prolongation, at least any regular and avowed prolongation, from the choice made of New South Wales:* it is the *banishment* alone that does. But the banishment is the only part of the punishment which the statute law either speaks of in that light, or takes any care for the enforcement of: *the bondage* comes in by the bye: it was put in only to save charges.†

* The caution which dictated the words, "*at least any regular and avowed prolongation,*" was not a groundless one. In the so often quoted history of the colony, and especially in the continuation of that history, instances where the bondage has been prolonged, regularly or irregularly, are to be found to no inconsiderable amount. By "*avowed,*" I meant of course avowed by the supporters or advocates of the penal colony here at home: in the colony, whatever is done in this way by the governor, cannot of course but be avowed *there*, avowed by the governor by whom it is done.

† By the old transportation laws, the person who shall contract for the transportation of the convict, is declared to "have a property in his service,"[a] and that property is made transferable to "*assigns*," and, for the sake of what was to be got in America by the sale of that property, contractors were, latterly at least, if not from the first, ready and willing to take upon themselves the charge of the transportation, without further recompense. Under the modern transportation laws,[b] the same form of words is still copied, the practice under them being (as already stated,) as far as the condition of the convict at least is concerned, as different as possible. In saying "*the form of words,*" I mean so far as concerns the giving to the transporter and his assigns, a property in the service of his passengers; though (as everybody

[a] 4 Geo. I. c. 11, § 1. [b] 24 Geo. III. sess. 2, c. 56, § 1, 13; 28 Geo. III. c. 24, § 5.

In speaking of the prolongation thus given to all these different lengths of banishment, a point I have all along been careful to keep in view, is the distinction between *design* and *execution*, between the effect intended to be produced and the effect actually produced. Ir its intention, it has to all alike been banishment for life. In effect, what has it been? To some perhaps what it was intended to be: to others, to many others, no such thing. For, not even at the first moment, at the time when the difficulty of evasion was at its highest pitch, did the effect come up with any uniformity to the intention: and the longer the punishment continues in use, the further and the further will it be from the attainment of this end. Many whose terms are expired, and who, with whatever views, pant for the exercise of those rights to which the law, as if it were in derision, pretends to have restored them, do indeed remain debarred from the exercise of those rights, according to the intention of those who devised and organized this plan of perfidy. But many — more, in abundance, than these politicians could have conceived — escape from this scene of intended annihilation, to afflict their mother-country a second time with their pernicious existence.

Then it is, that this expelled, this fruitlessly expelled mass of corruption — then it is, that (instead of putting on incorruption, as it was expected to have done by miracle, without any human means provided for the production of the effect,) it is found (as your Lordship has seen) to have put on a worse corruption, if possible, than before.

The price, in the way of injustice — the whole price is thus paid for the expected benefit: and it is but in an imperfect degree that the benefit is reaped. The proportions of penal justice are confounded; the poison of perfidy is infused into the system of government; and still the obnoxious vermin remain unextirpated.*

knows) at the end of the voyage there is nothing to be got by selling them, nor so much as any person to whom they can be sold; the transporter being paid, not by a purchaser in any such sale, but by government itself. — *Quere the first.* By what law does the governor exercise the power he takes upon himself to exercise in New South Wales over the convicts during their terms? Is the property of the service of each convict assigned over to him by the merchant-transporter under his contract? — *Quere the second.* By what law does the commander of a king's ship (the Glatton for instance) take upon himself to transport convicts? Is he made to sign a contract for the transportation of these his passengers, as an independent merchant would be for the performance of the same service? If the formality of a contract is employed, where is the legality? if not, where is the honesty of the practice? Powers obtained from parliament for one purpose are employed for another, and that an opposite one: powers given for the institution of domestic bondage, under management on private account in single families, are applied to the institution of public bondage, under management on trust account in gangs. Whoever said anything to parliament, of this radical change passed through Parliament under cover of the identity of the words?

* I. *No care taken in England, for four years and a half, to prevent unlawful returns: care then taken to prevent lawful ones.*

No. 1. *August* 1792, pp. 229, 230. — "During this month the governor thought it necessary to issue some regulations, to be observed by those convicts whose sentences of transportation had expired. The number of people of this description in the colony had been so much increased of late, that it had become requisite to determine with precision the line in which they were to move. Having emerged from the condition of convicts, and got rid of the restraint which was necessarily imposed on them while under that subjection, many of them seemed to have forgotten that they were still amenable to the regulations of the colony, and appeared to have shaken off, with the yoke of bondage, all restraint and dependence whatsoever. They were therefore called upon to declare their intentions respecting their future mode of living. Those who wished to be allowed to provide for themselves were informed, that on application to the judge-advocate they would receive a certificate of their having served their several years of transportation; which certificate they would deposit with the commissary, as his voucher for striking them off the provision and clothing lists, and once a week they were to report in what manner and for whom they had been employed."

"Such as were desirous of returning to England were informed, that no obstacle should be thrown in their way, they being at liberty to ship themselves on board of such vessels as would give them a passage. And those who preferred labouring for the public, and receiving in return such ration as should be issued from the public stores, were to give in their names to the commissary, who would victual and clothe them, so long as their services might be required.

"Of those here and at Paramatta, who had fulfilled the sentence of the law, by far the greater part signified their intention of returning to England by the first opportunity; but the getting away from the colony was *now* a matter of *some* difficulty, as it was understood that a clause was to be inserted, in all *future* contracts for shipping for this country, subjecting the masters to certain penalties, on certificates being received of their having brought away any convicts or other persons from this settlement without the governor's permission; and as it was not probable that many of them would, on their return, refrain from the vices or avoid the society of those companions who had been the causes of their transportation to this country, *not many could hope to obtain the sanction of the governor for their return.*"

No. 2. *February* 1793, p. 268. — "A clause was inserted in the charter party, [of the Bellona] forbidding the master to receive any person from the colony without the express consent and order of the governor." [The day mentioned as the day of her sailing from England, is the 8th of August 1792.]

II. *Return without permission easy:— Return, not Settlement, the general object.*

No. 1. *October* 1793, pp. 315, 316. — "Seven

Your Lordship sees below how large, how indefinite, the number is of these exiles, that may be expected to return: the number of all descriptions: of those, whose return the governor may have been willing to *permit*, of those, whose return the governor may have been *not* willing to permit; of those, whose return he may have been willing to *prevent*, according to law; of those, whose return he may have been willing to prevent, contrary to law.

On this head, two further considerations may be not altogether unworthy of notice: one regarding *number* again — the other, *quality*.

As to *number* of returners, whatever it may have been hitherto, it may naturally be expected to be greater and greater, the longer the establishment continues: because, the longer it continues, the greater the population of it may be expected to be, and, on that and other accounts, the greater the number of vessels that touch there in a year, whether for the purpose of bringing in more convicts, or for any other purposes; whether belonging to this country or belonging to other countries.*

persons, whose terms of transportation had expired, were permitted to quit the colony in these ships, and the master of the Sugar Cane had shipped Benjamin Williams, the last of the Kitty's people, who remained undisposed of. One free woman, the wife of a convict, took her passage in the Sugar Cane.

"Notwithstanding the facility with which passages from this place were procured (very little more being required by the master than permission to receive them, and that the parties should find their own provisions,) it was found, after the departure of these ships, that some convicts had, by being secreted on board, made their escape from the colony; and two men, whose terms as convicts had expired, were brought up from the Sugar Cane the day she sailed, having got on board without permission; for which the lieutenant-governor directed them to be punished with fifty lashes each, and sent up to Toongabbe."

No. 2. *October* 1793, p. 320.—"Charles Williams, the settler so often mentioned in this narrative, wearied of being in a state of independence, sold his farm, with his house, crop, and stock, for something less than £100 .... James Ruse, also, the owner of the experiment farm, anxious to return to England, and disappointed in his present crop which he had sown too late, sold his estate, with the house and some stock, (four goats and three sheep) for £40. Both these people had to seek employment until they could get away; and Williams was condemned to work as a hireling upon the ground of which he had been the master ....

"The greatest inconvenience attending this transfer of landed property, was the return of such a miscreant as Williams, and others of his description, to England, to be let loose again upon the public.

No. 2. *July* 1794, p. 382.—"The Hope sailed this month for Canton, the master being suffered to take with him one man, John Pardo Watts, who had served his time of transportation."

No. 3. *November* 1794, p. 398.—"This man [the master of the Revolution] had been permitted to ship as many persons from the settlement, as he had stated to be necessary to complete his ship's company; notwithstanding which, there was not any doubt of his having received on board, without any permission, to the number of twelve or thirteen convicts, whose terms of transportation had *not* been served. *No difficulty had ever been found by any master of a ship, who would make the proper application, in obtaining any number of hands that he might be in want of;* but to take clandestinely from the settlement the useful servants of the public, was ungrateful and unpardonable."

No. 4. *December* 1794, p. 400.—"The master of the transport [the Dædalus] had permission to ship twelve men and two women, whose sentences of transportation had expired."

No. 5. 18*th September* 1795, p. 429.—"We found after their departure, [that of the ships Endeavour and Fancy] that notwithstanding so many as fifty persons, whose sentences of transportation had expired, had been permitted to leave the colony in the Endeavour, nearly as many more had found means to secrete themselves on board her."

No. 6. *February* 1796, p. 457.—"In her [the Otter] went Mr. Thomas Muir.... and several other convicts, whose sentences of transportation were *not* expired."

No. 7. *March* 1796, p. 469.—"The Ceres sailed.... for Canton. Being well manned, the master was not in want of any hands from this place; but eight convicts found means to secrete themselves on board a day or two before she sailed."

See further, Supplement. Besides the natural facility of returns, lawful or unlawful, two other points may have been noted in this part of the case: the care *not* taken in the first instance, as to the prevention of unlawful returns: — the care taken afterwards for the prevention of lawful ones. But of this more particularly in another place.

* Now, lately, a king's ship (the Glatton, formerly of 54 guns) has been appointed, I see, to the service, instead of a contracting merchant's vessel, as before. Amongst other advantages, this course, as far as it is pursued, may reasonably be expected to put an end to the unpermitted emigrations. But the other channels will remain open; unless it should be thought fit to shut up the ports of New South Wales like those of Japan: an expedient which would cut up by the roots every idea of *trade*, and profit in the way of trade, the great object looked to, or professed to be looked to, in all *colonies*. See the head of *Economy* — Colonial advantages.

Whether this preventive effect was among the considerations that gave birth to the change, I do not pretend to know: one should rather hope it were not. The observation still remains in full force, that in this way nothing can ever be gained, that is not gained at the expense of law and justice. If by a re-importation at the public expense, the banishment of these exiles were made regularly to cease, as soon as it ceased to be legal — on these terms, and no others, the exclusion of all other means of return might (whatever became of trade) be reconciled to justice. *Nullus liber homo......exulet......nisi per legale judicium parium suorum vel per legem terræ.*— Violating this right by *deeds*, while it is allowed in *words*, is tearing *Magna Charta* to pieces, to patch up a bad measure of police.

TABLE OF CONVICT EMIGRATION:

Showing the Number of Convicts that, in about five years and a half, viz. from 22d August 1790 to March 1796, are reported by the late Judge-Advocate as having quitted, or attempted to quit, New South Wales: distinguishing whether with or without permission of the Governor, and if without, whether *Expirees* (persons whose sentences were expired) or *Non-Expirees*.

No.	Page.	Time.	Vessel.	Quitted— With Permission.	Quitted— Without Permission. Expirees.	Quitted— Without Permission. Non-Expirees.	Prevented. Expirees.	Prevented. Non-Expirees.
1	130	22 Aug. 1790.	Neptune	....	....	....	... 2†..	... 1‡..
2	136	26 Sept. 1790.	Open Boat	....	....	...... 5.....	....	....
3	156	28 Mar. 1791.	Open Boat	....	... 1...	...... 8......	....	....
4	190	3 Dec. 1791.	Albemarle & Active	....	"Some"	.. "Some"..	....	....
5	268	19 Feb. 1793.	Bellona	... 2...	....	....	... 2....	... 2....
6	283	24 April 1793.	Shah Hormuzear & Chesterfield.	... 5...	....	....	....	....
7	290	4 June 1793.	Kitty	...11...	....	....	....	....
8	315	13 Oct. 1793.	Sugar Cane and Boddingtons...	... 7...	....	.. "Some"..	... 2.....	....
9	398	9 July 1794.	Resolution	Some.*	....	......13...	....	....
10	400	15 Dec. 1794.	Dædalus	...14...	....	....	....	....
11	429 / 461	18 Sept. 1793.	Endeavour and Fancy	...50...	....	nearly 50	....	....
12	457	18 Feb. 1796.	Otter	....	....	"Muir & several others."	....	... 8..
13	469	Beginning Mar. 1796.	Ceres	....	....			
				‖ 89	‖ 1	‖ 76	6	11

* "As many as were necessary to complete the ship's company," exclusive of the unascertained ones. † Of whom one flogged. ‡ Flogged. ‖ These totals give the ascertained numbers.

From the inspection of this Table result the following observations:—1. Considering that in the list of Non-expiree escapers, there are three parcels in unascertained numbers, for one which there is in the list of Expiree escapers, there seems reason to think that the number of these emigrants to whom the liberty of departure had *not* been thought fit to be allowed, was little if at all inferior to the number of those to whom that liberty *had* been thought fit to be allowed. What would be said of the plan of safe custody pursued at home, if from Newgate the escapes were found to be as many as the pardons? 2. Among those who in ascertained numbers obtained this liberty by their own forbidden exertions, without permission from above, the number of those who had *not* a right to it was 76 times as great as of those who *had* a right to it. 3. Among those who in ascertained numbers having a *right* to this liberty, attempted to exercise it, the number of those who *failed* was six times as great as of those who *succeeded*. 4. Of the two individuals who were at the same time *flogged* for an unsuccessful attempt to exercise this liberty, one had, by the laws under which he had been sent thither, as good a *right* to it as those by whose orders he was flogged.

The consequence is, that the greater the use made of the colony in this or in any other way—the greater the increase of it in wealth as well as population—the greater, in a word, the degree of "*improvement*" it receives in all other points of view—the more incapable it becomes of answering the expectations formed of it, in regard to this its primary object—the more unfit, with reference to this the only real and substantial use that anybody has ever seen or professed to see in it.

Already has an open boat been known to furnish the means of escape; and that through the vast space between New South Wales and Timor. One of these days, as stations multiply, and the coasts become more and more difficult to guard, we may expect to see better boats, stolen or even built, for voyages of escape to Otaheite or some other of the many shorter voyages, with the help of a seaman or two to each of them, to command it.

Lastly, as to the *quality* of the persons—the sorts of characters, I mean, whose return may in the greatest proportion be expected. These are precisely those, from whom, on one account or another, the most mischief is to be apprehended. The species of delinquents, who with the greatest certainty can

command the means of their return, are those who occupy the highest ranks in the hierarchy of criminality; the men of science and connexion among depredators; the master-dealers who have accumulated a capital out of the profits of their trade; the receivers of stolen goods, those wholesale merchants who, by the very nature of their prolific department in the division of criminal labour, are, in a swarm of connected depredators, what the queen bee is in the hive.

It is the indigent, and unconnected malefactor alone, that stays there, for want of the means of buying his way back: among these, it is the unenterprising, and thereby the least dangerous species of malefactor, that will be most apt to stay there, for want of being able to employ with success those means of escape, which his more ingenious, or more audacious, and on either account more dangerous comrades, make such abundant and successful use of.

In the contemplation of the beauties of the colonial establishment, your Lordship has almost lost sight (I doubt) of the establishment sacrificed to it, and the parallel that was to be kept up between the favourite and the discarded measure.

During the continuance of the penal term, at any rate, the advantage, so far as the article of *incapacitation* for fresh offences is concerned, may, I flatter myself, be stated as being clearly enough on the side of the penitentiary establishment. Even in an ordinary prison, an escape is not a very *common* incident: under the new and still more powerful securities of so many sorts, superadded to the common ones, in a prison upon the panopticon plan, I have ventured to state it as, morally speaking, an *impossible* one.

After the expiration of the penal term, the part of the penitentiary house at home, so far as prevention of future delinquency is concerned, becomes, in comparison of that of the colony at the antipodes, I must confess, but an under part. My means would have had for their limits those of law and justice: I could not have added an illegal indefinite punishment to a finite legal one; I could not have flogged men for the exercise of their rights. I am not a ———, to tread upon the law. No, not in any case: so that how little soever he may have done in this way, in comparison of what he meant to do, that little will always be so much more than could in this way have been done by me.

For *reformation* indeed (as your Lordship has seen) I had strong means, and even *physical* means: but as to absolute *incapacitation*, incapacitation with regard to future mischief, physical means (I must acknowledge) fail me. It was on reformation (I must confess) I had placed my first reliance: first in order at any rate — and it was not a weak one. *Drunkenness*, in the "improved colony," universal: in a panopticon penitentiary house, impossible. *Religious exercise—there* odious, and generally eluded: *here*, uneludible, and by every imaginable and becoming device rendered as inviting and interesting as possible. *Profitable employment — there* again odious, in a great degree eludible, and eluded as much as possible: *here*, uneludible again, and by diversification (the opportunities of which would be abundant) and choice, as far as choice is admissible, rendered from the first not odious, and, by habit and universal example, easy and even agreeable.

After emancipation, profitable employment — *there* not *wanting* indeed, but still generally irksome, because, under preceding habits, all along rendered so, by habitual sloth, drunkenness, and dissipation: *here* certain, and in whatever shape, habit, concurring with choice, may have rendered most agreeable, to bodies and minds invigorated by inviolable temperance.

Constituted as human nature is, it may be too much to expect, that even these securities should in every instance be effectual: but where they fail to be so, here presents itself, in dernier resort, *incapacitation* — absolute incapacitation with regard to any third offence, after conviction of a second: I mean of course by consignment to the penitentiary-house for life. Take away this instrument of incapacitation, and there remains (as at present) no other but the savage and unnecessary resource of death, or the ineffectual resource of transportation: transportation nominally, and frequently but nominally, for life.

Experience is a standard I never miss appealing to, so far as it can be employed. On one side, on the side of the penitentiary establishment, no direct reference can, unfortunately, be made to it. To afford experience, it must have had existence; and that it should not, gentlemen took effectual care. Yet, notwithstanding all their industry, added to all their negligence (for the article of *escapes* has shown your Lordship how difficult it is to distinguish the one from the other by their effects,) a testimony nearer to that of direct experience — of experience of the penitentiary plan itself — than could easily have been imagined, has actually started up: experience, though not precisely of that very instrument of security, yet of those means of security that are most like it, and stand next to it.

The characteristic principle of the colonization plan (loose confinement, without inspection) having been tried and found to fail — to fail as completely as it was possible for a principle to fail—one resource alone remained. This was the opposite principle, close inspection — inspection as close as there were means for making it; with or without confinement, also according to the means. A jail is not quite

so easily built as talked of, not even in England, as I have had occasion to know but too well; still less in New South Wales, where even the makeshift dwelling-places could not be put together fast enough. A jail, however, being found to be the one thing needful — and among all countries most needful in that remotest of all accessible regions, to which delinquents were thus sent, on pretence of saving the expense of it — a jail, such as it was, was accordingly erected, as soon as it could be erected, and, moreover, as jail-room — room in a real immoveable jail — in that which, in the literal sense of the word, is meant by a *jail* — could not, with every exertion, be provided fast enough, a *succedaneum* to it was added—a sort of metaphorical ambulatory jail, in which the eye of an inspector, assisted or not by fetters, supplied, as well as it could, the place of prison-walls. The jail, as might have been expected—a jail built under such circumstances — was not always man-tight: it was, however, better than none at all, and, with all its imperfections (whatever they were,) was still the best and ultimate dependence.

This, then, was the real fruit of the establishment: to show (to such eyes, I mean, whosoever they may be, as are not self-condemned to incurable blindness,) to show its own perfect inefficacy, and the absolute necessity of that other establishment which, in its two different shapes, has twice been sacrificed to it, and in the vain hope of saving the honour of so many honourable and right honourable personages, still continues to be sacrificed to it. Such was the upshot of this grand Colony-founding expedition !—to save the expense of an originally improvable, and afterwards beyond all former conception improved, system of inspection - management: men sent off year after year by hundreds to the antipodes, to be kept without employment to corrupt one another under a sort of incomplete inspection-management in a makeshift jail, at an expense (for this too your Lordship will see) from twice to four times as great as that of the system sacrificed to it. Happily, on those terms, and at that distance, the necessary jail, such as it was, was built.* In New South Wales, under the law of fabricated necessity, as in Constantinople, under the *lex regia*, the will of the *Imperator* was the sole law—sole undisputed law—law not in name but in effect—law not to be dealt with like the law of Parliament —not to be trod upon, but to be obeyed. It was law paramount, my Lord, and without any *dispensing power*, such as (your Lordship will see) has been exercised in this country to overrule it. It being the legislator's interest, as well as that of every other honest man in the colony, that the jail should be erected, and his conception of his interest not being disturbed by imaginations, such accordingly was his will. A law was passed for the building of that jail, and (how incredible soever it may seem to honourable and right honourable gentlemen in this country, that a law for building a jail should find obedience) built it was.

In addition to the positive testimony of the fact, it seemed necessary that a demonstration should thus be given of the possibility of such an event, lest, without some such preparation, judging of the state of law and politics *there* by the state of law and politics *here*, your Lordship should have rejected it as incredible.

The testimony does not stop here. Not only among the convicts, who were transported to the antipodes to be kept in order, but among the soldiery that were transported with them to help to keep them in order, the root of all disorder was found to lie in a deficiency of inspection: and accordingly, whatever imperfect check was ever given to the disorder, was given to it by supplying that deficiency — supplying it either by inspection simply, or by inspection coupled with confinement, as the *causa sine quâ non* for rendering it sufficiently steady and effective.

In that land of universal and continually increasing corruption, the guardian class (as might have been expected) became corrupted by their wards. To stop the contagion, exertions on the part of the officers were neither deficient, nor yet successful. After years of ill success, what at last was the remedy? — a wall: — barracks, with "a high brick wall round them," or "an inclosure of strong paling," to answer the same purpose.†

Under the head of *Incapacitation*, one instrument I had like to have omitted, to the credit of which, the founders and conductors of this establishment have a most indisputable and exclusive title—and that is *death*. For keeping a man out of harm's way — out of harm's way in both senses—out of the way of doing it — out of the way of receiving it — the homely proverb is applicable in this case with indisputable propriety—*Stone dead has no fellow*.

In the course of about eight years and a half, from the 13th of May 1787 to the 31st of December 1795, convicts shipped 5196: died in the passage 522:‡ and all not told. Such care had the founders taken of their colonists, that, in the mere passage, without reckoning famines at the end of it, they had *decimated* them: more than decimated them, as per account, and the account is evidently an incomplete one, the article of deaths being left unnoticed in regard to *five* ships out of *twenty-eight*.

* I. Collins, p. 383.

† I. Collins, pp. 303, 455.

‡ See Table of Mortality, p. 198.

"Bad enough indeed: but did not the fault lie in the contractors?" Yes, my Lord, there was but too much fault in the contractors, but it was not the less the fault of those who contracted with them, and of the system under which they contracted. It was the fault of ——— and his man of economy, by a double title; for having fixed upon so incurably bad a system (sacrificing to it the so much better system they found ordained by parliament with the assistance of the twelve judges,) and for having rendered the management so much worse than even under that bad system, it need to have been made.

First cause of the mischief—*length of the voyage:* the effect of the unexampled distance of the spot—of the spot chosen to be colonized, and to be thus colonized.

Second cause of the mischief—*want of interest* on the part of those on whose power depended the prevention of it—the profit which the transporter had it in his power to make by putting people to death—whether by starving them or crowding them—this profit in both cases being left to be reaped with impunity, and unbalanced by any profit to be got by keeping them alive:—want of that care which might and ought to have been taken, to do what in that case it would have been so easy to do—to bring the two antagonizing forces—*duty*, and that sort of *narrow interest* which acts in opposition to duty, into coincidence.

These causes were, both of them, peculiar to this *new* transportation system: they had not, either of them, any place in the *old*. While the territory, to which the transportation was allowed to be made, was comprised within the limits of what was then British America, the length of the voyage was scarce the third or fourth part of what it is in the case of New South Wales. Thus it stood in point of *distance*. The transportation was performed under the care of those, who, in the case of each individual under their charge, not only had nothing to gain by his death, but had everything to lose by it. The animal was a saleable commodity, the carcase not. The sale was not only *a* source of profit, but the *only* source. Thus it stood in point of *interest*.

Turn now, my Lord, to the penitentiary system. Under both editions of it, voyage none. Under the original system, the managers no gainers by the death of any mortal under their management: under the improved edition of it, the manager a great loser by every one—a hundred pounds in hard money, besides other losses not susceptible of a precise and concise estimate, but which would in many instances rise to a still superior amount.

This stipulation, to the want of which, more clearly than to any other cause, may be referred the loss of so many lives as were lost in the passage to New South Wales, was not only contrived by me for my contract, and inserted by me, but maintained by me against a strong reluctance to the contrary: and after all, it was rather to the influence of will over will, of humble importunity over despotic carelessness, than to any influence of reason on such faculties as I had to deal with, that I could find any ground for attributing my success:—if success it can be termed, to receive a plighted faith, with a clandestinely promised and carefully concealed determination to break it at the bottom of it.

What the cause of this reluctance was, I do not pretend to know: whether the wish was, that the wretches should die to save charges and lighten the budget, or that the influence of profit and loss over the human breast had not been able to demonstrate itself to gentlemen even in that situation, and after so many examples of it as the voyages to New South Wales had even then been already forcing upon their eyes. The idea of establishing this coincidence, and in some such way as that proposed in the case of the penitentiary establishment, has, since that time, (if my recollection does not deceive me) conquered in some other instances the predilection for accustomed abuse, in preference to unaccustomed remedy, and forced its way into legislation or administration, I forget which. But the case is not worth hunting for: it would be found (I believe) either in the convict transportation trade, or in the slave trade, or both.*

* Since the writing of the paragraph in the text, upon turning to Bryan Edwards' History of the West Indies (vol. ii. book 4, ch. 4,) I find the following information on this head. So long ago as the year 1788, in the act 28 G. III. c. 54, use had been made of the principle of *reward*, for cementing the connexion between interest and duty, in the case of the ship surgeons, thereby required to be retained, on board the several ships concerned in the negro import trade. This might be a year or two before the time when, upon drawing up my penitentiary establishment proposal, the article in question had first occurred to me. In this legislative provision it is the principle of *reward*, reward alone as contradistinguished to *punishment*, that is applied. But it is the property of the principle of *life-insurance*, as employed in that proposal, to apply, and by the same movement, both springs of human action, *reward* and *punishment*, together: reward in the event of a degree of success, and thence as it may be presumed of care and exertion, beyond what is looked upon as the ordinary mark;—punishment in case of no higher a degree of those desirable results, than what is considered as falling short, by a certain amount, of that ordinary mark. The idea of employing the principle of reward in this way—the principle of reward singly—in the preservation of human life was thus, though a recent one, a principle already fixed in legislative practice, at the time when the idea of this principle of double action thus occurred to me—which double principle, even in this its double

In the account of *death*, I have mentioned as yet but one of the efficient causes of this species of security, viz. *duress* on ship-board. On their arrival at this land of cruel promise,

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form, has so little of novelty in it, that it is in fact no more than the old established practice of *life-insurance*, applied to the preservation of the thing itself, which is the subject of the insurance. The practice of life insurance was in itself of comparatively very ancient date; but in the form in which it is thus familiar, it has no influence on practice, no influence on the duration of the life which is the subject of it. The life is in the hands of the owner, and depends not in any respect upon the conduct of the other party—on the conduct of the person who receives the actual premium, on condition of subjecting himself eventually to the payment of the contingent retribution. It is only in particular cases, that the life of one man is lodged in the power of another, in any such way as to be capable of being abridged, not only by positive deliberate design, but by mere negligence; and that in circumstances which render the application of punishment by judicial means impossible. Of these cases, the case of the gaoler presents itself as the most extensive and prominent case. To this case the other cases in question may be reduced. A ship employed in the transportation of convicts is a floating jail, employed for the confinement and conveyance of criminals under the law of the state: a ship employed in the slave-trade is a floating jail employed for the confinement of innocent men under the law of the strongest.

It appears, therefore, that in the contrivance of this article, I had proceeded one step indeed, but no more than one step, and that a step already indicated, and by no means obscurely, to any scrutinizing eye, by the closeness of its analogy to the first. *Reward* is a principle you get a man to subject himself to the action of, without difficulty: punishment, which, even when composed of no stronger materials than those very ones which constitute the matter of reward, is so much the stronger principle of action—punishment, you may in this shape get him to submit also to the action of, upon terms.

This accordingly is what is done, by the principle of life-assurance, applied as above, to the relation subsisting between the keeper of a place of confinement and his prisoners.

Under the influence of even the weaker half of the double principle—under the influence of reward alone, introduced as above, into the slave-trade, it may not be amiss to observe what effects, in practice, had already been the result:—say in July 1793, when the penitentiary proposal, after two or three years of neglect, was unfortunate enough to obtain the acceptance of Mr. Pitt.

Before the slave-trade regulations spoken of, "a ship of 240 tons would frequently be crowded" (according to Edwards)[a] "with no less than 520 slaves; which was not allowing 10 inches of room to each individual. The consequence was, often times a loss of 15 per cent. in the voyage, and 4½ per cent. more in the harbours of the West Indies, previous to the sale, from diseases contracted at sea." After, and doubtless by virtue of, those regulations—with their consequent comforts, prescribed breathing space and professional care taken together—the separate efficacy of each being undistinguishable—after these regulations made in 1788, and yet before June 1793 (this being the date that stands in the dedication prefixed to the first editions of Edwards' book,) the 15 per cent. loss on the voyage was sunk already to an average of 7 per cent.; an apparent average which, for the reasons he gives, ought scarcely to be taken for more than perhaps half that rate. This at sea, and the 4½ per cent. loss in harbour, was reduced at the same time to so small a fraction, as three fourths per cent.

The experiment has instruction in it:—instruction derivable from it in more points of view than one. The difference between loss and loss shows the influence that may be exercised over human action, by a due application of the principles of *moral dynamics*—by a right management of the springs of action in human nature. The amount of the original customary loss—this amount compared with the causes that produced it, may serve to show how insufficient is the utmost check which the principle of sympathy, supported by whatever assistance it may happen to receive from all other principles of the *social* stamp—religion for instance, and regard for character, put together—is capable of opposing to the influence of the *self-regarding* principle of pecuniary interest, even where human life—where human lives even in multitudes are at stake. It may at the same time serve to obviate the imputation of passion or propensity to personal satire, if on any occasion a suspicion should be seen to suggest itself, that, in this or that instance, the fate of convicts may have been regarded with indifference, by men hardened possibly in some instances by personal character, naturally more or less in all instances by official situation. The views thus given are not among the most flattering ones; but the statesman, who should on that account shut his eyes against them, would be as little fit for his business as the surgeon was, whose tenderness would not suffer him to observe the course he was taking with his knife.

But to return. The principle on which these regulations were grounded (I mean in particular so much of it as concerns the rewards) had, all this time, not only been introduced into the statute book—introduced by that means within the pale of that consecrated ground, to which even the jealousy of office cannot refuse the name of *practice*—but had been agitated, and (one may almost say) beat into every head, in and about the treasury, at both ears, by those discussions about the slave-trade, that year after year had been occupying and agitating both houses of parliament: and the act itself by which this principle was first introduced, has since been, year after year, amended and enforced by statute after statute. Of this so much agitated—this so universally accepted principle—accepted at least in its application to the conveyance of the unhappy subjects of the black trade—what use, what application, was made in the adjustment of the *contracts* for the conveyance of white men, native Britons, to New South Wales, the contracts themselves, the contracts alone, were they for this purpose to be called for by parliament, would serve to show. It would then be seen—supposing the deficiency, if any, in point of care, to be the result, not of financial design, but of honest negligence—it would then be seen, whether the difference between a white skin and a black one were, or were not, an interval too wide, for such powers of abstraction as the treasury at that time afforded to measure and embrace.

[a] 2 Edwards, p. 121.

the fugitives from pestilence were received by famine. Those who had escaped the first decimation, were now to go through a second. In one year (1792,) out of fewer than 4000 convicts, 436 breathed their last, of whom more than 400 were carried off by famine. I say by *famine*, for such was the degree of natural salubrity in the spot (a degree so prodigiously superior to any thing which antecedent experience could have promised,) that in 1794, out of a greater number there died but forty two, and in 1795, but twenty.*

At the end of the year 1792, the destroying angel having been at work in this way for three years, out of the whole number shipped off within that time, more than one fourth, by sea and land together, had died: out of 4792, viz. 1291.

In this combination of associated scourges (both of them in no small degree the product of official management) one circumstance requires to be observed. Of the mortality on both elements, that part which took place at sea, deplorable as it was in itself, operated in effect in diminution of the whole. The 522 who by pestilence or famine perished in the voyage — these enviable, because earlier victims — these superfluous wretches, had they landed, would probably, and by a number still greater than themselves, have increased the multitude of those subsequent victims, whom, by an undisputed title, famine called her own. From the amount of the

* Medium of the two years, 33. This, taken from the whole number of deaths in 1792, 436, leaves, for the number of deaths by famine in that same year, 403.

TABLE OF CONVICT MORTALITY:

Abstracted from Collins' Account of New South Wales: exhibiting (so far as is there noted) the Deaths that took place on the Voyage and in the Settlement, from 13th May 1787, to 30th of April 1795, Casualties excepted.

		1. On the Voyage.			2. In the Settlement — died.				
Year.	Page.	Shipped.	Died.	Landed.	Page.	Males.	Females.	Total.	Children.
1787...	.........50.........	... 756 ...	... 33...	... 723 ...					
1788...	....	....	....	....	... 50...	... 28...	... 13...	... 41...	... 9...
1789[a]									
1790...	......114, 122......	...1222...	...278...	... 944...	...145...	...123...	... 7...	...130...	... 10...
1791...	167, 171, 174 175, 178, 179 181............	...2063[b]	...200[c]	...1863...	...194...	...155...	... 8...	...163...	... 5...
1792...	...201, 236, 245...	... 751...	... 10[d]	... 741 ?	...258...	...418...	... 18...	...436...	... 29...
1793...	...261, 304, 311...	... 321...	... 1[e]	... 320...	...332...	... 78...	... 26...	...104...	... 29...
1794...	.... 393	... 83 ?.	... ?...	... 83...	...403...	... 32...	... 10...	... 42...	... 10...
1795...	....	....	....	....	...446...	... 13...	... 7...	... 20...	... 1...
	Totals...	5196	522	4674	Totals	847	89	936	
					Add, died in the Voyage...			522	
					Grand Total..........			...1458	

To separate what may be considered as the *extraordinary*, from what may be considered as the *natural* rate of mortality, proceed as follows: —

1. Instead of being landed year after year, as per Table, suppose the whole number of convicts actually shipped in the nine years had been landed the first year.

2. Suppose the number of *natural* deaths to have been the same for each of these nine years as for the medium of the last two, viz. 33.

3. Multiplying, then, this medium number, 33, by the number of years, 9, you get for the total number of *natural* deaths in the nine years, ... 297

4. From the actual *total* number of deaths, natural and extraordinary, in the nine years, viz. 1458

Deduct the *natural* number of deaths, as above, ... 297

5. Remains for the number of extraordinary deaths, ... 1161

which, within six or seven, is the exact medium between 1-5th and 1-4th of the number shipped. But the real proportion (it may have been observed) must, on several accounts, have probably been above this mark.

[a] No account for this year is to be found, either in Captain Collins' Account of New South Wales, or in the accounts respectively given of the same colony by Governors Philip and Hunter, and Mr. Surgeon White.

[b] And upwards. [c] And upwards.

[d] In one ship out of three: of the others nothing said.

[e] In one ship out of three: none in either of the two others.

least ration necessary to health, take away a certain portion, only a part may die: aggravate the deficiency by a small fraction more, the same fate may involve the whole. The 522 and upwards who perished at sea, may, by having been thus destroyed in time, have saved more than 521 from being destroyed by famine, in addition to the 639, or thereabouts, who actually received their quietus from that scourge.

"But," says somebody, and not unplausibly, "to what good purpose seek, at this time of day, to rip up these old sores? In respect of life and death, the establishment presents two features: mortality at the outset; health and vitality afterwards: the mortality an infliction common to all new colonies: the vitality, a blessing in a degree altogether peculiar to this of New South Wales. The bad is past, and without remedy: for the future, (you yourself cannot but allow) the prospect is, on this side at least, a fair one."

Yes, my Lord, in the colony itself, men being once landed there—in the several spots at present settled, and, so far as concerns ordinary disease — the healthiness of the climate, and that in a more than ordinary degree, does indeed appear sufficiently established. But should the existence of the settlement, (which God forbid on so many other accounts,) be protracted for a period of considerable length — suppose double the length of that which has already elapsed — it will then be seen whether the increase of vitality gained by exemption from ordinary disease, be not dearly paid for by a decrease produced in the same period by the operation of the scourge of *famine*. Further on, as the facts rise to view, I may have occasion to sketch out the very particular nature of this danger, and to submit to your Lordship, whether it be not inextricably interwoven with the unchangeable circumstances of the spot.

The *pestilence* too — the preliminary pestilence during the voyage — will be found, and in a very high degree, not a mere accidental and occasional concomitant, but an essential and irremoveable one: for irremoveable it must be in no inconsiderable degree, if it be really what it appears to be, the joint result of the character of the passengers and the duration of the voyage. Leave them unconfined, they mutiny; confine them, they die. Negligence, above or below, may have augmented, as it does indeed appear to have augmented, the amount of the mortality from this source: care in both places may lessen it; but in such circumstances, mortality, and that in a most deplorable degree, is an affliction that, on any right consideration of the nature of the case, can scarcely but be expected ever and anon to take place, spite of the utmost care. Accordingly, as we are informed by Mr. Collins (ii. 222) in the Hillsborough, a ship that arrived in New South Wales with convicts in July 1799, the deaths were, out of 300, no fewer than 101, not to speak of sickness; although, according to the conception of the same ever candid reporter, "it was impossible that any ship could have been better fitted by government for the accommodation of prisoners during such a voyage." "The gaol-fever lurking in their clothing," is the cause to which he attributes this mortality, amounting to upwards of a third. "The terms of the charter party" he understands to have been "strictly complied with."

IV. Fourth object or end in view, *Compensation, or Satisfaction:* the means of it to be extracted, if possible, out of the punishment, and made over to the party specially injured (where there is one) in satisfaction for whatever loss or other suffering had been brought upon him by the offence.

In speaking of this as among the ends of punishment, I find myself driven, against my wishes, upon a distinction which, as often as it presents itself, can never be other than an unpleasing one: I mean the distinction between what *exists*, and what on the score of public good it were to be *wished* did exist, in point of law. That, in the case of *transportable* offences — of offences of the rank of those to which that species of punishment has been annexed — no such result is among the objects of our system of penal law, unless by accident, is but too indisputable: whether it were not desirable that it should be, may be left to every understanding, as well as to every heart, in which the study of law has not extinguished the sense of justice.

Observe, my Lord, the incongruity, the inconsistency. Where the offence is deemed least enormous, the party injured has his chance of satisfaction for the injury: where it is deemed most enormous, and punished accordingly, he has no such chance. Not that anything can be more satisfactory to anybody than this arrangement is to Blackstone.* As often as a man is hanged or transported, or kept in a jail or flogged, satisfaction is thereby given to somebody or to something:

* He observes, and with great truth (B. IV. ch. 1,) that if the Crown takes everything, there remains nothing for anybody else. "As the public crime (says he) is not otherwise avenged than by forfeiture of life and property, it is impossible *afterwards* to make any reparation for the private wrong." But is it necessary or right, that while damage remains without reparation — injury without redress — the King, who has sustained no damage—that is, A or B in the name of the King — should take everything — should sweep away the whole of that fund from which reparation might have been afforded? The affirmative was found as easy to assume, as it would have been difficult to prove.

this being assumed, what sort of a thing the satisfaction is, or who gets it, is, in the learned commentator's account, not worth thinking about.*

To your Lordship's most humble servant, since he conceived himself to understand what *satisfaction* meant, nothing but dissatisfaction (he will confess) has ever been afforded by the arrangements thus made with reference to it; and with these feelings, some sixteen or eighteen years ago, he set to work, and travelled through divers investigations in relation to the subject. *Cases*, by injury or otherwise, calling for satisfaction, with the reasons for affording it—*party to whom*—*party at whose expense*—it shall be afforded —*quantity* and *certainty* of satisfaction—different *species* or *modes* of satisfaction, adapted to the nature of the several *injuries*. Such were among the subjects of those labours, the produce of which, lately rescued from the spiders by a friend, should be laid at your Lordship's feet, could time be spared for any such trifles from your Lordship's sublimer occupations.

Nine or ten years ago, in drawing up the proposal for my penitentiary establishment, a thought struck me, that on paying the whole expense of the experiment, I might perhaps be allowed to purchase the satisfaction of stealing the idea into practice. Amidst the blindness and negligence, the marks of which appeared but too conspicuous, my hope was, that, under favour of that vulgar and almost universal jealousy, that would rather lose a ten-fold public benefit than not nibble down to the quick the recompense to the individual who should give birth to it, a plot even for doing good might pass undetected. I had, however, miscalculated: gentlemen were too sharp for me: what was wanting in discernment, had been supplied by prejudice. When the proposal came to be turned into a contract, the battles I had to fight would be here an episode, upon what I fear has already been accused of being itself an episode. Careful of my interests, as I myself was negligent—seeing deeper into them by a glance than I had been able to do by the calculations and meditations of months or years, gentlemen trembled lest I should ruin myself.

To let your Lordship into a secret, the danger of *loss* was as nothing: *diminution of gain* was all the sacrifice. What I bound myself to do in this way, was limited by considerations of necessary prudence: my *hopes*, and, as far as means should extend, my *intentions*, were to do more. Your Lordship is now master of my secret; which, to complete the confession, has never been such to anybody that would allow me to hope he might be prevailed upon to listen to it.

To return to the question. In New South Wales, the annual value of a man's labour being *minus* £46: 5s. or some such matter, the surplus applicable to the purpose of compensation could not be great: I mean, the positive surplus, extractable from that negative quantity, for the purpose of being converted into the matter of positive compensation, payable to the individual in Great Britain who had been a sufferer by the offence for which the convict in question had been consigned to New South Wales.

I hear your Lordship stopping me. "The idea of compensation being, in such a case, so novel—novel to a degree which you yourself, sir, have even been forward to acknowledge—the absence of it cannot, consistently with justice, be objected as a blemish to that system of punishment, of which the scene was laid in New South Wales." Be it so, my Lord: but the task in hand is—a parallel to be drawn between this *exotic* system and the *home* system, which has been set aside by it: and the mode of trial chosen by me, not knowing of a better, was, by their respective degrees of conformity to the several *objects* or *ends* of penal justice: and, at the very outset, in speaking of those ends, I assumed the liberty (I hope not altogether an unreasonable one) of adding to those actually and habitually aimed at, such others, if any, in regard to which it might appear reasonable and *desirable* that they *should* be aimed at. But, in regard to this of *compensation*, as far as my opportunities of observation have extended, and from all I have been able to collect from offices of insurance, courts of justice, and other places, it has appeared to me that, when a loss has been suffered, the receiving back again the amount of it, or so much towards it as may be to be had, is an event pretty generally looked upon as a *desirable* one; I mean, in the eyes of him by whom the loss has been sustained: nor, saving Blackstone, and those who think with Blackstone, has it ever happened to me to meet with any person, to whom it has presented itself in the opposite point of view, unless those be excepted, at whose expense and to whose loss the matter of compensation was to be found; a class of persons whose repugnance would not, I believe, on the present occasion, be regarded as an insuperable obstacle, forasmuch as, by the supposition, it is intended they should undergo punishment—and a degree of punishment, of which the mortification from such loss would be but a part.

If, then, it may be assumed that *compensation* presents a legitimate title to a place

* "We seldom hear any mention made of satisfaction to the individual," says he:—"the satisfaction to the community" (viz. by the destruction of one of its members) "being so very great; and indeed as the public crime," &c. continues he, giving the reason he is so well satisfied with as above.

among the ends of penal justice, it appears further to my humble conception, that supposing, with the favourite system of *exotic* punishment in one scale, and the discarded system of *home* punishment in the other, the balance were to be found to hang exactly even (the weights from the four other topics, *example*, *reformation*, *incapacitation* for fresh offences, and *economy*, being collected and thrown in on both sides) that on *that* supposition, I say—and *that* I hope, not a very presumptuous one—a few grains of compensation might (forasmuch as there could be nothing of the sort in the opposite scale) be found peradventure to preponderate.

This is all I presume to contend for under this head: and here ends all the trouble I wish to give your Lordship, for the present at least, on the subject of this unfashionable and little regarded end of penal justice.

V. Fifth head of comparison between the two systems: fifth and last object or end proper to be kept in view in a system of penal legislation: the collateral object of *Economy:* economy in respect of the aggregate expense of the establishments allotted to this purpose.

In the 28th Report of the Committee on Finance, your Lordship possesses a document in which this topic stands discussed, with that comprehensive and demonstrative accuracy in which the advocates of the penal colonization system have never ceased to behold their sentence. I beg your Lordship's pardon: instead of *advocates*, I should rather have said *supporters;* for, to be an *advocate* of a system, a man must have something to say for it, which in the case of a *supporter* is not necessary. In the present instance, in the character of advocates, I have always found gentlemen as silent and modest as in the character of supporters they have been found powerful—and by dint of power firm and strenuous. In the epithet, the so often quoted epithet, "*improved*," consists (as your Lordship will find) not only the substance, but the entire tenor of their argument: and on what sort of foundation that epithet has been applied is a point on which, by this time, your Lordship is not altogether unprepared to judge. Including, as it does, the whole budget of their arguments, for all occasions, on which the merits of the favourite establishment can come in question, it would be injustice to refuse them, on any occasion, the full benefit of it.

According to the calculations in the above Finance Report—in New South Wales, the average annual expense of convicts, per head, varying according to a variety of statements and suppositions, is from £33 : 9 : 5½ to £46 : 7 : 9¼; the highest rate of expense the most probable.

Annual expense per head of convicts maintained on the intended penitentiary plan, exclusive of expense of building and outfitting once paid, as per draught of contract,*	£12	0	0
Expense of building and outfitting for the intended number of a thousand, as per ditto, £19,000—say for round numbers £20,000: this at five per cent. makes to be added per head per annum, .	1	0	0
Expense of land for the building, had the spot at Battersea Rise been taken, that had been appropriated to the penitentiary establishment by a jury under the act of 1779, £6,600 :†, or if an allowance had been made for intervening rise of value, say £10,000: this at five per cent. makes to be further added per cent. per annum, ...	0	10	0
Total expense per annum,	£13	10	0

Say, accordingly, rate of expense of the colonial establishment to the penitentiary establishment—in round numbers, from somewhat more than two to one, to somewhat less than four to one.

True it is, that in the course of the seven or eight years, during which the pretence for relinquishment on the ground of *lapse of time*, had been manufacturing, the expense of necessaries had received such an increase, that, without some such addition as between £4 and £5, the faith plighted by the acceptance of the proposal in 1793, must (as your Lordship may have observed from my *armed*,‡ and therefore suppressed memorial of April 1800,) have been violated in substance. True it is also, that by the compliment paid to —— in the change of the spot from Battersea Rise (the spot chosen by the twelve judges, &c., and valued by a jury under the act of 1779,) to Tothill-fields, an additional expense would have been incurred: an expense, the amount of which, though not capable of exact liquidation, might, supposing the lot had been completed, be set down in round numbers at another £10,000: so that, upon the whole, the expense per head per annum of the pe-

* 28th Finance Report, p. 71.

† 34th Geo. III. c. 84, § 1.

‡ *Armed.* i. e. with reasons: *suppressed*, because the reasons were found troublesome. The distinction is one which it was necessary to note; because, in the unarmed memorial, cut out to pattern, as per order, and delivered in instead of the other, no such troublesome reasons might be to be found. The armed one is, moreover, the one which, notwithstanding all suppressions, has been in your Lordship's hands these six months. The harmless one lies very quietly upon the Treasury shelves. The distinction, by no means an uninstructive one, will be explained in the course of the *narrative* by a variety of examples.

nitentiary system, on the supposition of the thousand prisoners, would have been to be raised from about £13 : 10s. to about £18, 10s. But the difference, amounting to about £5 a-year per convict, belongs plainly to no such account as that of the original and proper expense of the penitentiary system: it may be set down to the account of public money wasted — wasted between ——— and ——— by the one of these ——— and incorruptible members of ———, in spite of the most strenuous remonstrances on my part, out of compliment to, and for the accommodation of the other.

"But the expense," says somebody, "will decrease: it was expected to be great, till the colony raised its own provisions; but now that period is arrived."

My Lord, if it were put to me to say, honestly and sincerely, whether the expense per head were most likely to increase or to decrease (reckoning from the last amount as stated in the report of the committee of finance), I should certainly answer — to decrease, and that in a considerable degree: though at the sametime, were I to be asked whether any considerable decrease would be to be *depended* upon, I could not answer otherwise than in the negative.

On the other side of the question, there are two other points, to which I could venture to speak with much greater confidence.

One is, that the rate of possible decrease has its limits; and those limits such, that there is not any the smallest chance whatever, that within the compass of the present century the rate of expense per head in New South Wales will be reduced to a level with the rate at which, if the public faith had been kept with me at the outset, it would have stood under the penitentiary system. I might perhaps add — nor even to a level with that at which it would now stand, if so much of the public faith, as at this time can be kept with me, were now kept.

Another is — that, long before the rate of expense per head, in New South Wales, is reduced so much as to the level of what it would *now* be under the penitentiary system, this latter expense would be reduced to nothing at all.

In relation to the first of these two points — the probable amount of the decrease in the case of the New South Wales system — if our expectations are governed by those which, according to the latest documents, were entertained by the conductors and supporters of it, *they* at least cannot complain much of the estimate.

Of the expense of the ten or eleven first years of the existence of this settlement, being the period comprised in the account signed *Charles Long*, 16th May 1798, and marked O in the 28th Finance Report, printed 26th June 1798, the grand total, at that time brought to account, amounted to £1,037,000. This total is compounded of seven divisions. One of them is intituled, "Expense of victualling the convicts and the settlement from home." To this division a note is subjoined, expressive of the expectations of the conductors and supporters of this system, in relation to the reduction of the expense. "It is supposed," says the note, "this expense, compared with the numbers victualled, will gradually decrease."

It is to this division (your Lordship will have the goodness to observe) — it is to this division that the expectations thus declared confine themselves: of no other of the seven divisions is any such expectation so much as hinted.

The sum expressive of the expense under this head is	£186,270
Lest anything should be omitted, that can possibly help to swell the amount of the only head upon which any expectation of reduction is so much as professed to be entertained, let it be observed, that (according to another statement in this same account) had the plan of accounting, pursued on and from the fourth year, been pursued during the three first, this division would have received an addition, at the expense of the last preceding one, intituled, "*First establishment of settlement and transportation of convicts:*" the total of which, for the ten or eleven years, is . . .	264,433
Say, then, instead of £186,270— and for round numbers, . .	200,000
From the grand total, amounting to	1,037,230
Strike off, for the same reasons, the odd	37,230
Remains	1,000,000

which gives, for the proportion of that one of the seven divisions on which alone any saving was so much as expected, one *fifth* part of the whole. The saving expected (your Lordship will be pleased to observe) was not the saving *of*, but only a saving *upon*, that branch of the expense: not a saving of the whole, but only a saving of some unspecified and unspecifiable part of it. Let us be more liberal, however, to honourable and right honourable gentlemen, than they would venture to be even to themselves. Call it a saving of the whole. On the other hand, let us take, for the probable continued amount of the expense per head, setting aside the deduction, the then actual amount, as found by

the committee, ...	£46	7	0¼
From the amount so found, let us, for the sake of round numbers, strike off the odd .	0	2	0¼
Remains	£46	5	0

Brought forward, .	£46 5 0
From this sum deduct the supposed saving, amounting to .	9 5 0
Remains	£37 0 0

In this £37, then, your Lordship sees that quantity *towards* which, according to the expectation of gentlemen who are urged by every imaginable motive to put the best face possible upon their "improved" colony, may be considered as likely to be making approaches, from time to time, but *to* which, even according to expectations so circumstanced, it can never be considered as susceptible, in the nature of the case, of ever being reduced.

But in this £37 your Lordship sees a rate of expense the exact double of that of the penitentiary establishment, taken at its latest and artificially augmented nominal amount, £18, 10s.

Being the amount to which gentlemen themselves had (as already mentioned) contrived to swell it from the	£13 0 0

Which was the original and proper rate.*

Here, then, as in a nut-shell, your Lordship may see the *morality*, the *economy*, and the *logic* of right honourable gentlemen — all in their genuine colours.

For seven years together, by a course of management which I may have occasion to exhibit elsewhere, they were manufacturing their "lapse of time;" and thus was formed *one* of their four grounds for the relinquishment of the incommodious measure.

In a still longer space of time (adding preceding delays) they manufactured a necessary "increase of terms;" and this was *another* of their four grounds: and, in these two harmonizing features, your Lordship beholds the *morality* of honourable and right honourable gentlemen delineated to the life.

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* In addition to this £46 : 5s., or this £37, the whole produce and value of the whole labour extracted or extractable from the convicts (while in their state of bondage at least) may be considered as so much thrown away : or, if not considered as thrown away, then, whatever may be the value of it ought at any rate to be added to the account of expense, since that account is lessened and reduced to those sums respectively by the amount of it. On the panopticon plan, one fourth part of the produce of each man's labour would, without any additional expense to government, have been employed—partly in insuring to him a maintenance in his declining years, partly in administering present comforts to himself and family, where he has one : the other three fourths would have been employed—partly in furnishing the capital necessary for the setting to work such convicts as should choose to betake themselves to the establishment for employment, after the expiration of their respective terms ; (a good deal of it in the charges of buildings, and other masses of fixed and other capital)—partly in affording subsistence and recompense to the various descriptions of persons employed in the way of management and superintendence.

Under the head of *Incapacitation* (viz. for fresh offences), I have had occasion to point out the advantages reaped in that way from the tranquillizing hand of *death.* The same active and gratuitous agent, while thus employed in the police department in cutting short the thread of life, will have been rendering proportionate service in the financial department, by a proportionable abridgment of the thread of expense.

At the time of the last account, the actual *quantum* of the expense, taken in its total, rose no higher than a million and thirty-seven thousand pounds, for the eleven or twelve years at that time elapsed : but unless gentlemen choose to take credit, as for a service done to his Majesty, for the number of his subjects thus got rid of, to this £1,037,000 should be added, upon a fair estimate, some such matter as one, two, or three hundred thousand pounds more. Bad as it is, as a measure of *police*—bad as it is as a measure of *finance*—it would in both characters have been still worse, had it not been for its efficacy in the character of a measure of *destruction.* Some men, I hope, will not, even in the secret of their own bosoms — no man, I trust, will openly, and in the face of day, be bold enough to set down this destruction on the *profit* side of the account. Not that even this flagitious profit, if it were one, could be justly placed to the account of this new invented transportation system : since, by setting or leaving men to rot in gaols at home, the same, or any still more *preventative* and more *economical* degree of destruction might be effected at a small part of the expense.

Notwithstanding this increase in the total *quantum*, the *rate* of expense per head (it may be observed on the other hand) would in this case have been diminished : since those divisions of the expense, which are fixed, and apply in common to the whole number of persons maintained — such as the expenses of the several official establishments—civil, military, and naval—those heads of expense having, by the supposition, a greater number of heads of persons to distribute themselves upon ; would fall, in so much the less magnitude, upon each. The truth of this observation must, to a certain extent, be admitted : some heads of expense there are, to which the survivance of the human beings, who perished, would not have added any increase. The expense of *transportation* is an example : but in what degree — or indeed whether in any degree — the expense of the several superintending establishments above mentioned, can with propriety be considered, as being in the same case, will be matter of great doubt. Throughout, the scantiness, or supposed scantiness, of these several establishments, appears to have been matter of general complaint : this complaint, well or ill-grounded, has been among the few complaints which appear to have met with adequate attention here at home, and a very considerable increase in the total of those establishments has been the consequence. Thus stands the matter, notwithstanding the reduction effected in the population, by the causes of destruction above mentioned: can it reasonably be assumed, that, if the population had been in any considerable degree greater, the establishments for the management of it would not in the same degree have been increased ?

This topic is mentioned only, (as Necker would say) *pro memoriâ :* to form a precise calculation, would require a mass of labour and paper disproportionate to the present purpose.

	£	s.	d.
The genuine expense of the discarded system was as . .	£13	10	0
The expense to which they had contrived to swell it, for the purpose of blasting it, was as .	18	10	0
Instead of it, and in the character of a declared ground for discarding it, though there be no incompatibility, they keep up the favourite system, the expense of which, by the latest accounts, was as	46	5	0
And which they themselves could not pretend to say was likely ever to be reduced so low as .	37	0	0

And here your Lordship has another sample, of that congenial cast of *economy*, for which the public is indebted to the contrivers of the never-to-be-forgotten *Poor Bill*.

It is to save the public from being burthened by that "increase of terms," to which, not altogether without reason, they apply the attribute "*great*"—to save his Majesty's subjects from paying £18 : 10s. that they saddle the present generation with £46 : 5s.—leaving to some future generation its chance for seeing the expense reduced to a sum between that and the £37.

And here, in conclusion, your Lordship sees a sample of that *logic* which has led to such *economy*, and proved such *morality* to be conducive to true interest, and compatible with lasting fame.

Your Lordship (I hope) has not forgotten, that, in relation to every one of those points which either have been, or ought to have been its *direct* objects — *example* — *reformation* — *incapacitation* in regard to ulterior offences— *compensation* for the mischief by past offences — the establishment has been (according to the nature of each object) as completely unconducive, or as strenuously repugnant, as it is possible for an institution to be: and it is for so pre-eminent a degree of unfitness with reference to all these its *direct* ends, that a compensation was to be looked for on the *collateral* ground of *economy*; — economy, the only ground so much as hinted at — the strong and favourite ground of right honourable gentlemen: — the only one of the five objects so often mentioned that appears ever to have had any pretensions to the honour of their notice: for, as to the confining the mischievous activity of convicts — confining it, by lawless force, to the spot from which the law, had its force been equal to that of right honourable gentlemen, would have set them free — confining it to a part of his Majesty's dominions, and thereby preventing it from displaying itself in any part except that one — as to this point, I have already had occasion to observe, that *change of place* and *annihilation* are not the same operation to an ordinary understanding, whatever they may be to extraordinary ones.

"In *arithmetic*," (says Mr. Rose most truly*) "there is no eloquence to persuade, no partiality to mislead. In its calculations, therefore," (I keep on saying with the right honourable gentlemen at my respectful distance,) "if the reader will have the patience to peruse them, plainly and fairly, as they are given in the preceding pages, he cannot be at a loss for his decision. To them the writer of these sheets," (I still keep up with him,) "can with confidence appeal. The subject," he continues and concludes, does not "admit of favour, but it cannot fail to obtain justice." There — there, alas! — he distances me. The subject — the subject in which *I* was concerned — *did* admit of *favour*, and therefore it *could not* obtain justice.

So much for the contingent decrease upon the expense of the favourite establishment. Your Lordship may now compare it with the decrease already hinted at, in the case of its devoted rival. Of this expense, the continuance being limited to that of the longest of two lives, one of them a very insignificant and useless one, was in June 1798, in a valuation printed in the 28th report of the finance committee, estimated at from about $12\frac{2}{5}$ to about $13\frac{3}{4}$ years;† and, in the course of the four years and more, which gentlemen have since contrived to make elapse, those two lives (it will be comprehended without much difficulty) have not, under the care thus taken of them, increased much in value.

Thus much, on the supposition of a *reduction* under one of the seven heads of expense. Against this will be to be set the contingency of an *increase*, under two other of these heads: a contingency which does not present itself as altogether an improbable one: I mean those of the *military* and *naval* establishments; to say nothing of the *civil*, which is so much inferior to the least of them.‡

* On the Civil List 1802, p. 39.

† Appendix H. p. 81.

‡ Comparative State of the three Establishments, Civil, Military, and Naval, in different years, as per 28th Report of the Committee of Finance, p. 25, and Appendix O to do. p. 121.

		1789.				1797.		
Civil, App. O. p. 121, . .		£2,877	10	0		£5,523	10	0
Military App. O. p. 121, .		6,847	1	10		16,906	4	$2\frac{1}{4}$
		£9,724	11	10		£22,429	14	$2\frac{1}{4}$
Naval, p. 25, ...	a	10,010	0	0	a	10,010	0	0
						£32,439	14	$2\frac{1}{4}$

a Average of the whole eleven or twelve years: the separate amount of the respective years being in the case of the naval establishment, unascertainable.

Your Lordship has not failed to notice in ts place the lady's letter. The initial and principal part of it brings upon the carpet this same topic (and sure enough, my Lord, it is not from that source alone that your Lordship has heard of it,) the two sorts of things at present needful to the "improved" colony — more vessels and more troops. The passage is in these words:—

"*Port Jackson, 7th October* 1800.

"H. M. Ship Buffalo, returning to Europe, gives me an opportunity of writing to you, and of mentioning the uncomfortable state of anxiety we are kept in by the late importation of United Irishmen. For these last six months we have been under some apprehensions: but ———, disbelieving their intentions, ——— took no steps to prevent their designs, until last Sunday week, which was the day fixed for the destruction of the military and principal families at Paramatta; a considerable settlement fifteen miles from this. The alarm being general, prevented their meeting: but above thirty of the ringleaders were apprehended and examined, when the greatest part confessed the horrid plot. Most of the passengers in the Buffalo treat this business as ridiculous: but this is probably because they are not likely now to partake of our danger, or from their not knowing the dreadful enormities already committed by these people in their own country. Our military force is very little in comparison of the numbers of Irish now in the colony, and that little much divided: the Buffalo's sailing leaves us without any naval protection whatever. Much trouble may befal us before any succours can arrive, even after our critical situation is known; and we have every reason to believe that other ships, with the same description of people, are now on their voyage to this place."

That these apprehensions, though expressed by a female pen, were neither unfounded nor exaggerated, appears pretty well established by posterior accounts. For these, indeed, I have no other warrant than that of the newspapers from which they are copied. All the knowledge I have of them is of the negative kind, viz. that I know nothing whatever, either of the authors of the respective articles of intelligence, or of the manner in which they found their way to the respective prints. But even this negative knowledge is not altogether without its use and application, since the result of it is, that the contents cannot have received any undue tincture from any motives by which the present representation may be supposed to have been tinged.*

"But New South Wales," (it may still be said,) "New South Wales, besides being an

* *Porcupine, 10th June* 1801.—"A letter from Botany Bay, dated the 7th October, contains the following intelligence:—'A very unpleasant circumstance had like to have occurred here lately. The Irish rebels, who were lately transported into this country, have imported with them their dangerous principles, rather increased than subdued by their removal from their native country. They began by circulating their doctrine among the convicts, and a conspiracy had scarcely been formed before it was happily discovered. They had conducted their scheme with great art and secresy, to which they were generally sworn, and offensive weapons were made, even from the tools of agriculture, for carrying their purpose into execution. In no part of the British dominions upon any occasion, could the troops and principal inhabitants show more zeal and alacrity in coming forward in support of the government.'"

Such is the account given in the above paper, of an affair which appears to have been the same as that spoken of in the lady's letter.

The account given of the same affair, in the continuation of Captain (now Lieutenant-colonel) Collins' history, is as follows, page 306:—"The Buffalo sailed for England on the 21st of October, and as the Governor had intended to touch and land at Norfolk Island, for the purpose of learning, from his own observation, something of the state of that settlement, some few of the Irish prisoners, who were suspected of laying plans of insurrection and massacre, were taken in the Buffalo, and landed there."

The prisoners in question appear to have been of the number of those who had been taken up (as the historian informs us), and examined on the suspicion of a plot of this kind, so long before as in the beginning of the preceding month. II. Collins, p. 302. Marks of falsehood (it is to be observed) appear on the face of the confessions as reported: but an interpretation that suggests itself is—that though the plot, as pretended to be confessed, was false, the object of the falsehood was to conceal a true one. That the belief of a true plot at the bottom of the whole, was generally entertained, appears by the exertions made, under the authority of the governor, to guard against the apprehended mischief, by so strong a remedy as the formation of *volunteer associations*: "two volunteer associations of fifty men each," out of such materials as "the most respectable inhabitants" in a colony so composed. The declared object was "the increasing the armed force of the colony." If in the amount of the regular force the deficiency had not, in the judgment of the governing part of the colony, been a very decided one, it may be imagined whether any such auxiliaries would, in any such number, have been called in to supply it.

Bell's Weekly Messenger, 3d *January* 1802.—"In consequence of a number of Irish rebels having been transported and sent to Botany Bay, and there attempting to subvert the government by various acts of disorder and tumult, that colony became in a state of insurrection; and at Norfolk Island they would have succeeded, but for the manly and spirited conduct of Governor King and Lieutenant-governor Patterson, who caused the principal ringleaders to be secured, some of whom were executed. The spirit of insurrection was in some degree revived by the arrival of the Lady Anne transport in March last, bringing with her one hundred and fifty of the vilest miscreants of all descriptions, convicted of the worst of crimes, such as murder, &c., &c.;

establishment for the maintenance, employment, and reformation of convicts, is moreover a colony: and, as colonies in general are admitted to be valuable possessions, so must this too; since this, whatever becomes of it in any other character, remains at any rate a colony."

My Lord — to confess the truth, I never could bring myself to see any real advantage derived by the mother country, from anything that ever bore the name of a *Colony*. It does not appear to me, that any instance ever did exist, in which any expense bestowed by government in the planting or conquering of a colony was really repaid. The goods produced by the inhabitants of such new colony cannot be had by the inhabitants of the mother country, without being paid for: and from other countries, or the mother country itself, goods to equal value may, without any such additional expense, as that of founding, maintaining, and protecting a colony, be had upon the same terms.

By accident, and for a time, there may indeed be, in the rate of profit obtained in dealing with the inhabitants of the new colony, a superiority with reference to the rate of profit obtained in dealing with other inhabitants of the mother country, or with the inhabitants of other states that are at the whole expense of their own maintenance; but such superiority is either not regarded as worth thinking about, or else tacitly assumed, and at any rate, never so much as attempted to be proved: while, on the other hand, an inferiority is at least as probable.* The supposition universally entertained — the supposition all along, though tacitly, assumed — the supposition on which statesmen speak and governments act, is — that the goods of the inhabitants of the colony—the productions of the colony—are obtained for nothing;—that the capital employed in carrying on the trade with the colony would not have yielded anything — would neither have yielded the ordinary rate of profit, nor any rate of profit at all, had it been employed elsewhere — had it been employed in any other branch of productive industry. On this supposition, the whole amount of the annually imported produce of the colony, figures annually on the side of national profit, without any *per contrâ* on the other side: or rather (what is still worse, and, if it were not so universal, more flagrantly absurd,) the export, by the sacrifice of which this import is obtained, is also considered as national profit: the loss, not only not deducted from the profit, but added to it.

Thus then stands the real account of profit and loss, in respect of colonies in general:— Colonies in general yield no advantage to the mother country, because their produce is never obtained without an equivalent sacrifice, for which equal value might have been obtained elsewhere. The particular colony here in question yields no advantage to the mother country, and for a reason still more simple — because it yields no produce.

The distinction is an essential one: I trust to your Lordship's candour for the keeping it in broad day-light. The proposition relative to the unprofitableness of *colonies in general* is one thing: the proposition relative to the particular unprofitableness of this *particular colony*, is quite a different thing. The first

but by a timely check it was soon overturned. We are happy to announce, that the military force there behaved throughout with much commendable firmness and spirit; though at the same time we lament that the present force seems by no means adequate to so dangerous and arduous an undertaking."

In the newspaper, as above, the time of the occurrence is not mentioned. In Lieutenant-colonel Collins' Continuation, no further mention is made of it, than what is contained in the following short paragraph, page 333:—"At Norfolk Island, it was fortunately discovered, that, on the 14th of December 1800, a plot had been formed by some of the convicts to murder the officers, and getting possession of the island, to liberate themselves. Two of the ringleaders were immediately executed." So far the historian: another circumstance, from which it may be judged whether the alleged plot, examined into but two months before, was altogether an imaginary one.

* In a report made by the committee of his Majesty's Privy Council in 1789 (a report which, it may be presumed, did not meet with much disagreement on the part of either the first Lord or the Secretary of the Treasury)—in this report, as quoted by the late Mr. Bryan Edwards, in his History of the West Indies,[a] the value of British capital in these colonies is estimated all together at £70,000,000. At the same time, the "Mercantile value of the capital per annum," (by which, I take for granted, he means the annual value of the produce raised by the employment of that capital) is estimated at no more than £7,000,000. This according to Mr. Edwards' estimate; in which, if I understand the plan of valuation right, the rate assigned is rather higher than in that of their Lordships. Upon 70 millions, 7 millions is 10 per cent. In Mr. Pitt's and Mr. Rose's estimate, made for the purpose of the income-tax, 15 per cent. is reckoned upon as the ordinary rate of profit upon mercantile capital, employed in the home trade;[b] an estimate which, in the main, appears to be agreed to and confirmed by Dr. Beeke.[c] It would be a problem worthy the ingenuity of those right honourable gentlemen, to show us by what process "*indemnity for the past and security for the future*" are to be bestowed upon this or any other country, by engaging its capitalists to employ their capital in a branch that produces no more than 10 per cent. in preference to so many other branches that produce 15 per cent.

[a] II. Edwards. p. 381. 390. b. iv. ch. iii.

[b] Rose, Brief Examination, &c., 7th Edit. 1799, App. No. 7.

[c] On the Income Tax, 2d Edit. 1800. p. 131.

may be consigned to the chapter of romance, by the admirers of *arithmetic and its calculations:* the other will remain as firm, as impregnable, as ever. The former gentlemen may amuse themselves with, and welcome—a good round House-of-Commons laugh will dispose of it—the other will not quite so easily be got rid off. *Ex nihilo nihil fit,* is a maxim, which, by its antiquity, may at least be protected from the reproach of *innovation.* From a colony in which no *import-worthy* produce can be raised, no import-worthy produce therein raised can be imported.

A trade, indeed, and a trade with foreign countries, has all along been carried on in New South Wales by the inhabitants of New South Wales. A trade? Yes, but of what sort?—a trade consisting of buying without selling. The articles purchased have been such of the necessaries and comforts of life, as the inhabitants, receiving pay immediately or mediately from the government of the mother country, have been willing to purchase, at the expense of the whole, or a corresponding portion of such their pay. The articles sacrificed have consisted, exclusively, of the money of which that pay has been composed: a trade which, with reference to any profit considered as receivable by the inhabitants of the mother country, consists in giving to the people of other countries for nothing, and in the shape of hard money, so much wealth raised on those same inhabitants of the mother country by taxes;—a trade which consists in paying tribute, tribute without return, to foreign countries. The people at large, on whom the money is levied, to be distributed, in the shape of pay, among the functionaries of government in New South Wales, get nothing at all for their money: the functionaries themselves get very little for it, since the goods they have purchased with it have always been sold to them at most enormous prices: prices some number of times perhaps as great, as they would have got the same articles for had they staid at home.*

Such has been the nature of the trade hitherto: and, if there be any prospect that

* II. Collins, page 202, *March* 1799.—" The settlement was at this time much in want of many necessaries of life; and when these were brought by speculators and traders, who occasionally touched there, they demanded more than 500 per cent. above what the same articles would have been sent out for from England, with every addition of freight, insurance," &c.

Ibid. page 280, *3d January* 1800.—" Having touched at Rio de Janeiro, (the Mercury) had brought many articles for sale, as well from that port as from England, most of which were much wanted by the inhabitants: but the prices required for them were such as to drain the colony of every shilling that could be got together." To such a degree had this exhaustion been carried, that, if I apprehend the passage right, a species of paper money, and that issued by government itself, had been then already, and if so, probably continues to be, current in New South Wales. The Governor, not being supplied from government at home with money in sufficient quantity for the purchase of that proportion of the stock of public subsistence which was to be obtained by purchase from such of the inhabitants by whom it had been produced, found himself under the necessity of coining this fictitious species of money, imposing thereby, on government at home, a quantity of debt to the amount of it.

Ibid. page 263.—" The difficulties which were still placed in the way of the commissary in preparing his accounts to be sent home, through the settlers and other persons who had not come forward, as they were sometime since directed, to sign the requisite vouchers for the sums paid them for the grain or pork which they had delivered at the public stores, [these difficulties still continuing unremoved] the commissary was directed not to make immediate payment in future, but to issue the *government-notes* quarterly only, when every person concerned would be obliged to attend, and give the proper receipts for such sums as might be there paid them. This was a most useful regulation, and had been long wanted." *The* government notes: an expression which seems to imply that the issuing of such notes had then already been in habitual use.

This was in August 1799: four or five months before the time of the complaint made, as above, of the disappearance of hard money.

Down to the last moment, the supposition which the historian proceeds upon is—that whatever hard money ever finds its way into the colony in any shape, though it be but in half-pence, will (unless preventive measures, such as he suggests, be employed) find itself under a perpetual impossibility of staying there. These remedies are—such as unexperienced good sense would naturally suggest—but of the complete and radical inefficacy of which, history, and the reflections which have grounded themselves on that history, might have completely satisfied him. Though every shilling had been called half a crown, no American who received it to take with him to America, would have given so much as thirteen pence for it.

Ibid. page 271, *November* 1799.—" Information was at this time received, that copper coinage to the amount of £550 was in the Porpoise, whose arrival might be daily looked for. The circulation of this money would be attended with the most comfortable accommodation to the people in their various dealings with each other; and it might be so marked as to prevent any inducement to take it out of the colony. If it should ever be found convenient by government to order a silver coinage for the use of the settlement, if it were fixed at not more than half or two thirds of the intrinsic value of what it might pass for, so as to render the loss considerable to any one attempting to carry it away, it would be felt as a considerable advantage, and would effectually prevent the forgeries to which a paper currency was liable."

By this same passage, the existence of a paper currency, though not directly stated, appears, however, to be pretty effectually confirmed.

In addition to the other imported blessings—idle hulks and equally idle gaols—the foundation of a sort of *national debt* appears thus to be

the nature of that trade should undergo a change in any degree or in any respect more advantageous to the mother country, it will rest with those to whom such prospect has manifested itself, to point it out.

Of real advantages, if the case afforded any, *experience*, with reflection grounded on it, might furnish out the list: for ideal ones, *opinion*, wherever it may be to be found, is the sole resource.

In a passage that has already been submitted to your Lordship's notice, the late Judge Advocate of the colony, taking upon himself the task of advocate in another sense, and calling over the muster roll of the advantages supposed to result from the establishment, gives the precedence to those, to which, had they any real existence, the precedence would unquestionably be due: I mean those which consist in its supposed subservience to the ends of penal justice: of which supposed subservience I have already had occasion to submit to your Lordship a somewhat different estimate. Of any of the advantages commonly looked for in colonies (advantages derived from population, produce, or trade,) I find no specific mention. Two other supposed advantages are, however, added, the account of which, that no injustice may unawares be done to it, is here given in the respectable author's own words. The passage has been already quoted. "Valuable nursery to our East-India possessions for *soldiers:* valuable nursery to our East India possessions for *seamen.*" Nothing, indeed, of all this does the learned Advocate state it as having yet proved: but all this he supposes that one day or other "*it may prove.*" *

As to *soldiers*, in as far as it lies within the bounds of physical possibility, that soldiers stationed in New South Wales may be sent from thence to the East Indies, in so far may New South Wales be considered as *capable* of serving as a nursery for soldiers, with reference to the East Indies. But, forasmuch as the nearest port in New South Wales is farther from the mother country than the farthest port in the East Indies is, farther in point of time, by a third or so of the way—and forasmuch as it is not New South Wales that is in the way to the East Indies, but the East Indies that are in the

laying, if not already laid, in the "*improved*" colony.

The particular vessel to which the exhaustion is ascribed, was (it may perhaps be observed) not a foreign but a British one. But the cause which gave birth to the first manifestation of the effect, would naturally be the cause to which, in a simple and ordinary mode of statement, the effect itself, the whole effect, without distinction of parts and degrees, would be ascribed. By the table of ship arrivals given by our historian, among eighteen vessels that, in the course of the seven or eight years, from November 1792 to February 1800, arrived in New South Wales with cargoes of goods for sale, it appears that eight were from his Majesty's dominions (Indian possessions included;) the other ten from various foreign states.

It is in deference to the more obvious, and what, I believe, are the more common opinions, that a distinction between a trade of this sort, carried on with foreign ships and territories, and a trade of the same sort, carried on with British ships and territories, is thus noted. The more closely it is examined into, the more immaterial will this distinction, I believe, be found to be. What is gained in this way upon his Majesty's subjects resident in New South Wales, by his Majesty's subjects resident in Old Britain, operates in no greater degree in diminution of taxes (taxes raised upon his Majesty's subjects resident in Old Britain,) than if it had been gained by those same subjects of his Majesty in other ways, or gained by foreigners. The real mischief is—that wealth in any shape—in that of money, as well as in any other, and not more than in any other—that wealth in any shape, raised without equivalent, and therefore in the way of compulsion, by taxes, should be parted with for such a fragment of an equivalent—should, as to so large a proportion of it, be parted with, without equivalent—by those whose means of subsistence are composed of it, and limited in their amount by the value of the goods obtained in exchange for it. They are thus loaded with a continual tax, to the amount of the difference between the price they are thus obliged to give in the improved colony, and the price for which they might have provided themselves with the same articles had they staid at home.

In proposing what presents itself to him in the character of a remedy, the worthy magistrate does not consider that the evil, such as it is, is rooted in the very nature of the colony, and bids defiance, not only to the remedy proposed, but to every other. For many articles which the colony does not produce, a demand—a continual demand exists in the colony:—and that demand is (in the language of Adam Smith) an *effectual* demand; since, for a certain portion of what they would wish to have, men have that which will be accepted of by the proprietors as an equivalent, viz. hard money. If the country produced anything that would be worth sending to other countries, that would be better worth sending than money—so much as it produced in this shape, so much would be so disposed of, and the equivalent in money saved. But the country does *not* afford any such internal produce. Whatever it does produce is consumed by the inhabitants, affording them a part, and but a part, of their subsistence. Part of it is, without changing hands, consumed by the persons by whom it is produced: the remainder changes hands, and is purchased — either by the Governor there, in exchange for the hard money he receives from England, or by the functionaries of government, in exchange for money received by them, in the shape of pay, from the same source.

In the nature of men and things, is it possible to keep money from going out of a country, where (besides that the export of money out of it is not prohibited) men have on the one hand *wants*, on the other hand *money*, and nothing but money to give in exchange?

* Collins, I. Preface, pp. 9, 10.

way to New South Wales — on these considerations it should seem, that to be at hand for service in the East Indies, any given number of soldiers would be rather more usefully stationed if landed at once at that port, whatever it be, of the East Indies, which at any given point of time seemed likely to afford the speediest demand for their services, than if sent onwards, two or three months' voyage farther to New South Wales, for the chance of getting them back again upon occasion by another voyage of the same length. The two wars with Tippoo Saib present the two occasions on which, since the foundation of the colony, the demand for soldiers in the East Indies seems to have been at its highest pitch. I dare venture to hope that, for some years at least, if not generations, there will not be such another. It does not appear that on either of those occasions any great use was made of that part of his Majesty's army which was stationed in New South Wales.

If not in any state of things resembling the present, I am at a loss to conceive in what probable future state of things gentlemen here at home should, on any principles whatsoever, be either warranted in keeping up, or in any degree even disposed to keep up, in the ever so much "improved" colony, a superfluous detachment, applicable to the service of the mother country, in the East Indies.

As to *seamen*, men and boys may be sent on this voyage, with, for aught I know, as much advantage in point of instruction in seamanship as on any other voyage or succession of voyages, of the same length: but their proficiency in point of seamanship would not, I suppose, be much the less, if the voyage were performed at once in those other tracks, in reference to which a voyage in this track is supposed to serve as a *school* or "*nursery*," and if there were something to be brought that were worth bringing so far from the country to which they are sent. When the vessels that have carried out from Britain goods and passengers to New South Wales, have brought any thing home, it has been (if I am not mistaken) either from China or the East Indies: so that the advantage in respect of the nursery for *seamen* has been pretty much of the same sort and degree as the advantage just mentioned in respect of the nursery for *soldiers*. If, in this case, there be any occult property in a round-about voyage that renders it preferable to a direct one, the case (I think) must be much the same in other voyages: in which case, the policy would be to establish some general and comprehensive system, for preventing vessels in general from arriving at their respective places of ultimate destination so soon as they would otherwise.

Wise or otherwise, the argument, it must be confessed, is far enough from being an unpopular one: navigation—(conveyance on the favourite element) — navigation, like trade, considered as an *end*, rather than as a *means*: or if as a means, as a means with reference to colonies. Here again comes in the ancient and favourite circle: a circle by which, in defiance of logic and mathematics, political conduct is squared, and wars generated. What are colonies good for? — for nursing so vast a navy. What is so vast a navy good for? — for keeping and conquering colonies.

A construction that might possibly have been put upon the supposed utility of the colony in the character of a *nursery*, receives a direct and decided negative from the author in the course of the book: I mean, the supposition that it was from among the convicts themselves that the two branches of the public service were to receive their recruits. Upon this construction a negative is put, not only by declared opinion, but by the specific experiences by which that opinion was produced.*

* No. 1. *September* 1794, p. 391.—" Eight convicts were pardoned on condition of their serving in the New South Wales corps until regularly discharged therefrom.

" It was pleasing to see so many people withdrawing from the society of vice and wretchedness, and forming such a character for themselves as to be thought deserving of emancipation." — Pleasing certainly for the time, but observe the upshot, as per No. 3.

No. 2. *October* 1794, p. 395.—" A guard of an ensign and twenty-one privates of the New South Wales corps were on board the transport. Six of their people were deserters from other regiments brought from the Savoy; one of them, Joseph Draper, we understood, had been tried for mutiny (of an aggravated kind) at Quebec.

" This mode of recruiting the regiment must have proved as disgusting to the officers, as it was detrimental to the interests of the settlement. If the corps was raised for the purpose of protecting the civil establishment, and of bringing a counterpoise to the vices and crimes which might naturally be expected to exist among the convicts, it ought to have been carefully formed from the best characters; instead of which, we now found a mutineer—(a wretch who could deliberate with others, and consent himself, to be the chosen instrument of the destruction of his sovereign's son) sent among us, to remain for life, perhaps, as a check upon sedition, now added to the catalogue of our other imported vices."

No. 3. *February* 1796, p. 455.—" The most active of the soldiers in this affair" [a riot] " had formerly been *convicts, who, not having changed their principles with their condition*, thus became the means of disgracing their fellow soldiers. The corps certainly was not much improved by the introduction of people of this description among them. It might well have been supposed, that being taken as good characters from the class of prisoners, they would have felt themselves above mixing with any of them afterwards; but it happened otherwise. They had nothing in them of that pride which is termed *esprit de corps*, but at times mixed with the convicts familiarly as former companions; yet, when they chose to quarrel with, or complain of them, they meanly asserted their superiority as soldiers."

Be this as it may, of this stamp (it may naturally enough be conceived) were the ingredients of that mass of "*political advantage*," "the prospect of which" (our historiographer informs us) "was" actually "presented by the plan to the patriotism of its noble originator" (the late Lord Sydney) — a prospect which appears to have all along presented itself in colours equally pleasing to his Lordship's successors on the second floor of the treasury, as well as to his and their colleagues on the first — I mean always down to a point of time, the fixation of which I must beg leave to submit to your Lordship, to whom it is as precisely known as it is completely unscrutable to me at my humble distance.

The importance of these same elements of political advantage will appear in the clearer light, if they be admitted to be, what to my humble apprehension they appear to be, fair and correct samples of all those "*indemnities for the past*" — all those "*securities for the future*" — which have ever been presented by anything else that has ever borne the name of a colony, to the scrutinizing optics of those well exercised cultivators — some of them (as your Lordship has seen) professed panegyrists — "of *arithmetic and its calculations.*" If a fit standard of "appeal" on the subject of the burthens on the civil list, it can scarcely be a very unfit one on the subject either of the burthens or of the benefits from this or other colonies. But it is only where wisdom or fortune happen to have put right honourable gentlemen in possession of what presents itself to them as a good case, that they have either pens or tongues or so much as ears for any such undistinguished and undistinguishable individual as he who, on this ground, as well as some other already mentioned corners of the field of economy, would be proud to wait upon them in the character of a co-appellant.

In what then consists the real acquisition, the real advantage derived from the plan of colonizing the antipodes — colonizing them with settlers selected for their unfitness for colonization? This real acquisition (for *one* real one I do not dispute) I will beg leave to present your Lordship with an honest view of.

Two hundred and fifty plants, or thereabouts — two hundred and fifty new discovered plants — composed the amount of the stock of vegetable curiosities that had been imported from thence in 1796, according to the estimate communicated to me (in 1796 I think it was, or 1797) by Lieutenant-colonel Paterson, the chief upon the botanical staff of that colony, as well as upon the military.

In these two hundred and fifty plants, together with such others as may have been added to the number since, your Lordship sees the whole of the real gain that has ever been reaped, or can, on any tolerably rational ground, be expected ever to be reaped, by this our mother country, from that ever so much "improved" colony. In speaking of this as a *gain*, I admit it to be a *real* one: in my own person, by the evidence of my own taste, I feel it such.

But plants, my Lord, as well as gold, may

No. 4. *May* 1796, p. 475.—"Arrived two officers of the Bengal army, and a surgeon of the military establishment, for the purpose of raising 200 recruits from among those people who had served their respective terms of transportation. They were to be regularly enlisted and attested, and were to receive bounty-money.

"On the first view of this scheme, it appeared very plausible; and we imagined that the execution of it would be attended with much good to the settlement, by ridding it of many of those wretches whom we had too much reason to deem our greatest nuisances; but when we found that the recruiting officer was instructed to be nice as to the characters of those he should enlist, and to entertain none that were of known bad morals, we perceived that the settlement would derive less benefit from it than was at first expected. There was also some reason to suppose, that *several settlers would abandon their farms*, and leaving their families a burden to the store, *embrace the change* which was offered them, *by enlisting as East India soldiers.* It was far better for us, if any were capable of bearing arms and becoming soldiers, to arm them in defence of their own lives and possessions, and by embodying them from time to time as a militia, save to the public the expense of a regiment or corps raised for the mere purpose of protecting the public stores and the civil establishment of the colony.

"Recruiting, therefore, in this colony for the Bengal army being a measure that required some consideration, and which the Governor thought should first have obtained the sanction of administration, he determined to wait the result of a communication on the subject with the Secretary of State, before he gave it his countenance. At the same time, he meant to recommend it in a certain degree, as it was evident that many good recruits might be taken, without any injury to the interests of the settlement, from that class of our people who, being no longer prisoners, declined labouring for government, and, without any visible means of subsisting, lived where and how they chose."

Good — in the mouth of a governor of the "improved" colony, looking to the interests of that same colony, and to no other interests—the worse the nuisance, the better the riddance. But a Governor of Bengal?—what, on such an occasion, might be expected to be his language? Let the late chief magistrate of the "improved" colony, Lieutenant-colonel Collins, speak for him: "What community," says he, speaking of the colony at the latest and most improved period of its existence, May 1800, (ii. 295,) and on the very question respecting the endurance of the emigrants from thence, in this very country of Bengal — "what community, where honesty and morality was cultivated, would not deprecate even the *possibility* of such characters mixing with them, with as much earnestness as a people in health would dread the importation of a *plague* or a *yellow-fever*."

be bought too dear: and moreover, though it were fit to make as light of money as right honourable gentlemen appear on this occasion to have made of it, still, in the account of population, for each vegetable acquired your Lordship would find, I believe, some number of human lives most miserably destroyed; nor, after all, is it altogether necessary to the gathering seeds in a country, that a colony should be planted in it.

I know that, for economy like that in question, something like a precedent might be found: but unfortunately it is not broad enough. What the island, to which Botany Bay has given its name and character, was to the first Lord Sydney, this island of ours was in its day to a still more illustrious student in natural history, that first of conchologists and of concholegists — the Emperor Claudius. I say, my Lord, with submission, the precedent is not broad enough. To reap the fruit of his expedition to this wild country, the Emperor employed an army, we are told, in gathering shells here. So far the parallel runs, but no further. Employ an army here in shell gathering? Yes: but he did not leave one here.

In return for so many choice and physical plants transplanted *from* the colony, there is one plant, though it be but a metaphorical one, which has been planted *in* the colony, and of the planting of which, the founders of Botany Bay have the indisputable merit — (God forbid that it should ever be of the number of those *transplanted hither!*) and that is — the plant of *military despotism.* — Of this plant, in the soil and situation in which it is thus planted, it may be said, with at least as much truth as once by a celebrated verbal florist,* it was said of *true glory* (I think it was, or some such vegetable,) *radices agit et propagatur.* Unhappily, in the next island to this we have it already, though it is there (God be thanked!) but an annual plant; and even there men had rather see it on the dunghill than in the hot-house: nor in saying *men* am I uncandid enough to except even the very men who planted it there. In the other island—the seven months distant island — it is perennial; and the very geographical position of the country—with or without the particular nature of the use thus made of it — is enough to make it such.

My Lord, I could not use a poisoned weapon, though life depended on it. Without discrimination, I neither condemn *martial law* — nor even *torture.* Of words significative of ideas thus complex and thus extensive, a proposition can scarcely be framed, that shall at once be clear of all exception and be true. Knowing that government throughout is but a choice of evils, I am on every occasion ready to embrace the least of any two, whatever may be its name. In speaking of the colony as a vast conservatory of military law, I am therefore far enough from saying either that *that* law ought now to be abolished there (supposing the settlement with its abominations to be persevered in) — or even that it ought not to have been introduced. Odious as the plant is — fœtid as it is, even at that vast distance, to the sense of every true Briton — yet in that distant country, in which it has thus been planted, I admit it to be an useful one — I admit it even to be a necessary one. Yet this, my Lord, I will be bold to say — and let those to whom it is sweetest, contradict me if they dare — that the *end* for which it is employed must be pure and clear of all objection — must be pure indeed, if there be virtue in it to afford a sanction to such *means.*

I have already mentioned (p. 180) my intention of submitting to your Lordship a view of the subsequent symptoms of improvement that have manifested themselves in the improved colony, according to the history of it, as brought down to the time of the latest accounts (dated August 1801,) by the second volume of the valuable book so often mentioned. To this view it has since occurred to me to subjoin, by way of contrast, a view of the effects of the penitentiary system, as established in several of the *American states:* pointing out at the same time, in these latter establishments, a few particulars from whence a conception may be formed, whether their salutary efficacy would have experienced any diminution had the economical and moral features of the system been crowned by the *architectural* features of the panopticon or *central inspection* principle. At the outset of the letter, not to trouble your Lordship oftener than necessary, my intention was to have included this ulterior matter in the compass of it; but, considering that, of the three months within which your Lordship had the goodness to say you would " endeavour to get something settled" (I mean between the 19th of August and the meeting of Parliament,) two months and a half are already gone — and considering that there remains accordingly but a fortnight for the accomplishment of those endeavours — and considering that under your Lordship's anxiety for the accomplishment of them, the conversations your Lordship was to have had with the Chancellor and the Judges, may have been brought to a conclusion any day, while these pages were but bringing to a conclusion — under the spur of all these incentives, I find myself compelled by necessity to refer to a further day, and to a second letter, all such supplemental matter — and, for the moment, to subscribe myself thus abruptly, my Lord, your Lordship's most obedient and humble servant, JEREMY BENTHAM.

Queen's Square Place, Westminster,
2d November 1802.

* Cicero.

SECOND LETTER TO LORD PELHAM, &c. &c. &c.

IN CONTINUATION OF

THE COMPARATIVE VIEW OF THE SYSTEM OF PENAL COLONIZATION IN NEW SOUTH WALES,

AND THE

HOME PENITENTIARY SYSTEM,

PRESCRIBED BY TWO ACTS OF PARLIAMENT OF THE YEARS 1794 AND 1799.

My Lord,

I resume the pen. I now submit to your Lordship the promised continuation, together with the promised contrast. On the one hand, the effects of the penal colonization system in New South Wales: on the other hand, the effects of the penitentiary system in North America: the good effects of it, even in its least perfect state: subject still to those imperfections for which the *central-inspection* principle presents, as I flatter myself your Lordship will recognise, a most complete and indisputable cure.

Before the picture of reformation, as it has shone forth in that rising quarter of the world, is begun to be displayed, a few words will be necessary for the purpose of fixing places, times, and vouchers. Permit me accordingly to convey your Lordship's attention for a moment, to that scene of *quondam* transportation — suffer me to set it down among our *ci-devant* colonies — the now happily independent (and long may they remain so!) *United States*. Instruction grows there; your Lordship would not disdain it, though it were from enemies: how much longer shall it remain unprofited by us, sent to us, as it has been so long ago — sent to us from relatives and friends?

It was Pennsylvania that took the lead. To the task of reformation, or at any rate to the change which presented itself under that name, the first hand was there set in 1786. In that year passed an act for a new system of punishment, under which hard labour should take place of imprisoned idleness: — labour, and that hard enough: but to be performed in public, in an ignominious garb, in irons, by men in gangs on the roads, and even in the streets. Under this first plan, though already in use in Switzerland, and as such indicated by Howard, success was soon observed to fall short of expectation.* The friends of reformation were, however, not to be discouraged. An experiment of four years

* *Lownes*, p. 76.—"In the year 1776, the Convention of Pennsylvania directed a reform of the penal laws, and the introduction of *public* hard labour, as a punishment for offences. This was attended to by the legislature, and an essay was made in the year 1786, by a law which directed that the convicts should be employed in cleaning the streets, repairing the roads, &c., have their heads *shaved*, and be distinguished by an *infamous* habit. This was literally complied with; but, however well meant, was soon found to be productive of the *greatest evils*, and had a very opposite effect from what was contemplated by the framers of the law. The disorders in society, the robberies, burglaries, breaches of prisons, alarms in town and country — the drunkenness, profanity, and indecencies of the prisoners in the street, must be in the memory of most. With these disorders, the numbers of the criminals increased to such a degree, as to alarm the community with fears that it would be impossible to find a place either large or strong enough to hold them. The severity of the law, and disgraceful manner of executing it, led to a proportionate degree of depravity and insensibility, and every spark of morality appeared to be destroyed. The keepers were armed with swords, blunderbusses, and other weapons of destruction: the prisoners secured by cumbrous iron collars and chains fixed to bombshells. Their dress was formed with every mark of disgrace. The old and hardened offender daily in the practice of begging and insulting the inhabitants—collecting crowds of idle boys, and holding with them the most indecent and improper conversation. Thus disgracefully treated, and *heated with liquor*, they meditated and executed plans of escape — and, when at liberty, their distress, disgrace, and fears, prompted them to violent acts, to satisfy the immediate demands of nature. Their attacks upon society were well known to be desperate, and to some they proved fatal!"

Observations. — In this disastrous and justly exploded, though neither unexampled, nor in every respect discommendable system, your Lordship will immediately recognise the New South Wales *jail gangs*. Not that the parallel reflects anything like blame upon those who instituted them in the "improved" colony. What is one man's meat is another man's poison: mis-

was on that theatre deemed a sufficient trial. Men were not there too dim-sighted to see, too careless to observe, too unfeeling to regret, too proud to confess an error, or too indolent to repair it. In 1790, after a hard-fought battle of such battles as quakers fight, and on both sides it is confessed an honest one (on both sides, my Lord, what is essential to honesty, an open one,) by an act of that date they set on foot another experiment —they obtained a second change. The badge of infamy was now pulled off: "the iron entered no longer into the afflicted soul;" separation, as far as means permitted, took place of promiscuous aggregation; seclusion, yet not unseen, succeeded to tumultuous publicity. This second experiment was successful almost beyond hope: how eminently so, your Lordship will see as we advance.

Penitentiary houses, at present two: at Philadelphia and New York. In that at Philadelphia, the plan of management under its present form, commencing in April 1790; the prison in New York, begun in 1796, completed in 1797;* month not mentioned. I speak of those from which accounts have reached us. Two others already in existence in New Jersey and Virginia.† Two more in contemplation last year, and begun perhaps by this time—in Massachusetts and South Carolina.

Historians, four: I mention them in the order of their dates: dates are not to be despised in histories. For the Philadelphia house three:—1. *Lownes*, the chief projector, whose account of it comes at the end of a pamphlet on the punishment of death by his co-operator *Bradford*, then one of the judges of the State, since deceased; date in the preface, February 26, 1793. 2. The *Duke de Liancourt*, a visitor (a veteran in the service of the prisoner and the poor); Philadelphia printed, London reprinted, second edition, date in title-page 1796; year of visitation from private information 1795.‡ *Turnbull* of South Carolina (another philanthropic visitor;) date in preface, 4th August 1796; date in title-page 1797. For the New York house, one: Eddy, New York printed; date in title-page 1801; date of subsequent report annexed, 9th February 1802.

The Pennsylvania house is that which, as the date itself shews, served as an example, and naturally as far as circumstances permitted, as a model. New York follows next.—Caleb Lownes took the lead in Philadelphia. Thomas Eddy followed him in New York. In both these men, your Lordship will find, under the garb of a quaker, the head of a statesman, as well as the pen of an academic.

After this short introductory view of the transactions in North America, permit me to wait upon your Lordship back again for a moment, to New South Wales.

Facts compose the chief matter of this supplemental address: and in how eminent a degree the general propositions advanced in the preceding one will be found to receive confirmation from these facts, is a point I have already ventured to give intimation of.

In a tract like this, history in its own order is but a labyrinth, but to this labyrinth here as before, the *ends* of penal justice hold out a clue.

Under the head of *reformation*, replaced in New South Wales by *corruption*, I will beg leave to attend your Lordship from effects to causes; and among effects, again, from smaller to greater—from the lighter shades of depravity to the darker: presenting the effects in this order, lest the opposite one, though in other respects perhaps the more obvious one, should have produced the sensation of an anti-climax. In subordination, however, to these *logical* principles of arrangement, the *chronological* one will have its use: it will serve all along to show, and in an order perfectly natural, the progress of the "improved" colony from bad to worse. Matter thus pregnant, cannot but give birth to a variety of observations; but this will in general be most readily apprehended, and most effectually recommended, when preceded by the particulars by which they were respectively suggested.

Our authors not having had themselves any such arrangements in their view, the matter belonging to one head will every now and then, in the shape in which it comes from their hands, be found intermixed with matter belonging to another. This incongruity, which, however, is but a merely relative one, cannot always be cleared away: all that can be done with it is to point it out: this done, now and then a repetition constitutes the sum of the inconveniences.

Under each head, each picture has two

chief could not *but* be done by them in Philadelphia: mischief could *not* be done by them in New South Wales. In Philadelphia, their deportment was an object of disgust and terror to the great bulk of the passing multitude: it became, notwithstanding—such is the power of example, even the example of wretchedness and infamy over some minds—it became in one way or other a source of corruption to a few. In New South Wales, society was proof against both mischiefs—no eye to which the deportment of the profligate was not much more familiar than any other: no ear—which had any unlearned wickedness to learn of them. Jet cannot be blackened: putridity cannot be corrupted.

* Eddy, p. 17. † Ibid. p. 70.

‡ It was in that year that it came to me in French, from the worthy author, in manuscript, and (for I know not what cause relative to the calamities of the times) under the seal of secresy. It was not till the next year I had the satisfaction of finding myself released from the obligation, by an advertisement announcing a translation of it in English.

sides: one for the *soi-disant* "improved" colony; the other for those really improved countries, whose apprenticeship in the form of colonies is expired. For each feature of depravity and corruption on the one side, your Lordship will see, on the other side according to the nature of the feature, either a blank for the absence of it, or a space filled with the opposite feature of virtue and reformation.

I. Reformation. — *First feature, Industry: Opposite feature of Corruption, Sloth; — Prevalence of it in New South Wales.*

No. 1, p. 23. *February* 1797. — "An extraordinary theft was committed about the middle of the month, which very forcibly marked the inherent depravity of some of these miscreants. While the miller was absent for a short time, part of the sails belonging to the mill were stolen. Now this machine was at work for the benefit of those very incorrigible vagabonds who had thus for a time prevented its being of use to any one, and *who, being too lazy to grind for themselves, had formerly been obliged to pay one third of their whole allowance of wheat, to have the remainder ground for them* by hand-mills — an expense that was saved to them by bringing their corn to the public mill."

No. 2, p. 40. *June* 1797. — "In consequence of the proclamation which was issued in the last month, one of the run-away convicts delivered himself up to a constable, and another was taken, and lodged in confinement: they appeared to be half starved; yet their sufferings were not sufficient to prevent similar desertions from work in others, nor a repetition of the offence in themselves; such was the strong aversion which these worthless characters had to anything that bore the name of *work*. More labour would have been performed in this country by 100 people from any part of England or Scotland, than had at any time been derived from 300 of these people, *with all the attention that could be paid to them.*"

Observations. — Which "all" (it appears, as well from the nature of the case as from passage upon passage in the history) could not be much: — a fresh occasion for bringing to view that deficiency of necessary inspection which is among the indelible features of the system of forced colonization.

No. 3, p. 202. *March* 1799. — At this time, "among other public works in hand were, the raising the walls of the new gaol, laying the upper floor of the windmill, and erecting the churches at Sydney and Paramatta. Most of these buildings did not advance so rapidly as the necessity for them required, owing to the weakness of the public gangs; and indeed *scarcely had there ever been a thorough day's labour, such as is performed by a labouring man in England, obtained from them. They never felt themselves interested in the effect of their work, knowing that the ration* from the store, whatever it might be, *would be issued* to them, *whether* they *earned* it or *not;* unlike the labouring man, whose subsistence and that of his family depends upon his exertions. *For* the individual who would pay them for their services with *spirits,* they would labour while *they had strength to lift the hoe or the axe;* but when government required the production of that strength, it was not forthcoming; and *it was more to be wondered that, under such disadvantages, so much, rather than so little, had been done.* The convicts whose services belonged to the crown were for the most part a wretched, worthless, dissipated set, who never thought beyond the present moment; and they were for ever employed in rendering that moment as easy to themselves as their invention could enable them.

"Of the settlers and their disposition much has been already said. The assistance and encouragement which from time to time were given them, they were not found to deserve. *The greater part had originally been convicts,* and it is not to be supposed that while they continued in that state, their habits were much improved. With these habits, then, they became freemen and settlers; the effect of which was, to render them insolent and presuming; *and most of them continued a dead weight upon the government, without reducing the expenses of the colony.*"

Observations. — The features of worthlessness are ascribed to them ("*the settlers*") in general: the non-convicts are alluded to, and are not excepted. In this view of it, the improved colony presents the picture of a community, in which not only the corrupt members of it are not amended, but the sound members — such as had been introduced into it — are corrupted. If such be the case, there is nothing in it but what ought to have been expected. In Letter I. page 210, instances in proof of it have been already given, in speaking of the *soldiery:* and more will come to be given under the head of *Public Functionaries.*

No. 4, p. 277. *December* 1799. — "The harvest was now begun, and constables were sent to the Hawkesbury, with directions to secure every vagrant they could meet, and bring them to Sydney, unless they chose to work for the settlers, who were willing to pay them *a dollar each day, and their provisions;* for at this time there were a great number of persons in that district, styling themselves free people, who refused to labour unless they were paid the most exorbitant wages."

Observations. — Standing out for the best wages that could be got, is no proof of sloth: it is rather a proof of that appetite for gain, which is the spur and natural concomitant

to industry; but high as the wages were, it appears there were vagrants, who preferred idleness even to such high wages.

No. 5, p. 314. *August* 1801. — "Nothing has been said, in this account of the public labour, of preparing the government ground annually for seed, and cropping it, or of gathering the harvest when ripe. But these must be taken into account, as well as threshing the corn for delivery, and unloading the storeships on their arrival; which latter work must always be completed within a limited time, pursuant to their charters. It has been said before, that it was *impossible to obtain a fair day's work from the convicts, when employed for the public:* the weather frequently interfered with out-door business, and occasioned much to be done a second time. Under all these disadvantages, and with a turbulent refractory body of prisoners, we are warranted in saying, on thus summing up of the whole of the public labour during the last four years, that more could not have been performed; and that it is rather matter of wonder that so much had been obtained with such means."

Observations. — Of wonder indeed! The worse the system, the greater the wonder that any given quantity of good works, how small soever, should be shown forth under it. The more irremediably bad — the more irreproachable the conduct, the more pitiable the lot, of those whose misfortune it was to have the management of it on the spot. The more radically bad the system, the more inexcusable those at home who planned it, but most of all those at home who persevered in it, its deformities all the while staring them in the face. The period is an early one for such reflections; but they accompany the idea of the "improved" colony from the very first glance, and never leave it till the last.

II. *Further features of* REFORMATION — *Frugality and Forecast: Opposite features of Corruption, Prodigality and Improvidence; — Prevalence of them in New South Wales.*

No. 1, p. 21. *February* 1797. — "It now appeared, that to obtain spirituous liquors, these people, the settlers, had incurred debts to so great an amount, as to preclude the most distant hope of liquidating them, except by selling their farms. Thus all their former industry must be sacrificed to discharge debts, which were contracted *for the temporary gratification of being steeped in beastly intoxication* for a certain length of time. All the cautions which had occasionally been inserted in the *public orders* against this dangerous practice, had not proved of any advantage to those whose benefit they were intended to promote; and it was observed with concern, that several scenes of shameful imposition, which had been practised by the retail dealers in this article, were brought to light by this investigation."

Observations. — Intermixed with the prodigality and the improvidence (your Lordship sees) comes *drunkenness:* but drunkenness comes in everywhere, and with every thing. We shall, however, have a head appropriated to it. All this reprobacy, too, (is it credible?) spite of all these *public orders* — all this *good advice* from the governor: pearls of which there has never been any want among these swine. Of the water of these pearls something will come to be said under the head of *Drunkenness.*

No. 2, p. 96. *March* 5, 1798.—"Speaking of the business before a court of civil judicature," "this," says our author, "consisted chiefly of litigation about debts contracted between the retail dealers and the settlers. As a proof to what a height this business had reached, it need only be mentioned, that an appeal was made to the governor in one prosecution for a debt of £868 : 16 : 10; which appeal was, however, withdrawn, the defendant consenting to pay the debt."

Observations.—No small mass of property to be amassed in such a place: but of the *source* of it mention has been already made under the head of Colonies (Letter I. page 207); and of the *security* of it, more may come to be said under the head of *Economy,* towards the close of the present letter.

No. 3, p. 97, 98. *March* 1798.—"The governor having received from the settlers in each district a clear and correct statement of their grievances and distresses, informed them that it was with real concern he beheld the effects of the meeting of each civil court which for the public accommodation he from time to time had occasion to assemble. The vast load of debt with which they so frequently felt themselves burthened *through the imposition and extortion of the multitude of petty dealers,* by whom the colony was so much troubled, with the *difficulties* under which the industrious man laboured *for want of some other mode of providing the necessaries* which he required, were grievances of which he was determined to get the better; and, as far as his situation would authorise him, he would adopt every means in his power to afford them relief.

"To this end he found it absolutely necessary to suppress many of those *licensed public houses,* which, when first permitted, were designed as a convenience to the labouring people; but which he now saw were the principal cause whence many had candidly confessed their ruin to have sprung.

"He wished it were possible to dissuade them from heaping such heavy debts upon themselves by the enjoyment of articles which they could do without, or by throwing away

their money in purchasing at every public auction rags and trifles for which such exorbitant sums were exacted. He urged them with a paternal anxiety to consider that their folly involved their whole families in ruin and misfortune, and conjured them to wait with patience the result of some representations which he had made to government, as well in their behalf as in behalf of the settlers upon Norfolk Island; by which he hoped that ere long they would have an opportunity of purchasing every European article that they might want, at such a reasonable and moderate price as they by their industry would be very well able to afford from the produce of their labour.

"The island upon which Captain Hamilton had run his ship, and thereby prevented her sinking with them at sea, was thenceforward to be distinguished by the name of Preservation Island. From thence, the colonial schooner had arrived with what remained of the property. As soon as she was unloaded, the property was put up to sale for the benefit of the underwriters, when the *little effect of the governor's recommendation of patience was seen by the most enormous prices being paid for every article. The money that should have been expended in the cultivation and improvement of their farms was thus lavishly thrown away;* and it happened fortunately enough for the underwriters that the wheat of this last season had been received into the public granary, and immediately paid for. *Twenty-two shillings were paid at this sale for one common cup and saucer.*"

Observations. — Besides prodigality and improvidence, more drunkenness, more good advice, as pregnant as ever with good effects. But of this in its place, as already mentioned. "*Imposition* and *extortion*," the fruit "*of the multitude of the dealers*"? Say rather, of the smallness of their number. In the multitude of dealers, much more surely than of "*counsellors*," there is safety. Copies of Adam Smith do not appear to have been abundant in the libraries of New South Wales.

Government to turn shopkeeper! — Perhaps a necessary remedy — not improbably a costly, and therefore most certainly a formidable one. *Away with it! cries Adam Smith.* But most assuredly, among the nations whose wealth he had in view, was no such nation as New South Wales. Of this further, perhaps, under the head of *Economy*.

No. 4, p. 120. *July* 1798. — "The ready sale which the speculators who called here constantly found for their cargoes, together with the ruinous traffic which was carried on by means of the monopolies that existed, in opposition to every order and endeavour to prevent them, would, beyond a doubt, without the establishment of a *public store* on the part of government, keep the settlers and others in a continual state of beggary, and extremely retard the progressive improvement of the colony."

No. 5, p. 198. *February* 1799. — "Presuming on the late inefficient harvest, the *settlers* requested again to be supplied with seed-wheat from the store, but were refused. It was well known that they sold for spirits, to the last bushel of their crop, and left their families without bread. Then they pleaded poverty and distress, and their utter inability to pay what they had borrowed. When seed has been lent them, they have not unfrequently been seen to sell it at the door of the store whence they received it."

Observations. — Again *the* settlers no exception in favour of *non-convicts.*

No. 6, p. 279. *January* 3, 1800. — "The Swallow, East-India packet, anchored in the Cove, on her way to China. She had on board a great variety of articles for sale, which were intended for the China market; but the master thought, and actually found it worth his while to gratify the inhabitants, particularly the females, with a display of many elegant articles of dress from Bond Street, and other fashionable repositories of the metropolis.

"On the 11th, the Minerva transport arrived from Ireland. Having touched at Rio de Janeiro, she had brought many articles for sale, as well from that port as from England, most of which were much wanted by the inhabitants; but the prices required for them were such as to drain the colony of every shilling that could be got together."

Observations. — Of this already (Letter I. page 207,) in speaking of paper money, and the staple trade of this peculiar colony.

III. *Per Contra* — Industry, Frugality, Forecast, *in the American Penitentiary Houses.*

1. *Philadelphia House, instituted* 1790.

No. 1. Philadelphia; 1795: Laincourt, p. 14. — "Out of his profits the prisoner is obliged to pay his board, and the price of, or in some cases a certain rent or hire for the instruments he uses. These payments, which are necessarily determined by the current price of commodities, are fixed by the inspectors four times in every year. At present it amounts to one-sixth of a dollar for each man's board. The *most infirm*, however, *may earn easily twenty pence per day*, by picking oakum; and there *are some who earn above a dollar.*"

No. 2. Philadelphia; 1796: Turnbull, p. 16. — "For each convict a separate account is kept by the jailor, charging him with his clothing, sustenance, &c.; and in which a reasonable allowance for his labour is credited. It is generally rather less than the wages of other workmen in the city. These accounts

are balanced at short periods, in order that the overplus or proportion which might be due to the prisoner, may be paid into the county treasury for safe keeping; and, once in every three months, they are audited before the inspectors. The committee of inspectors, once during the same period of time, fix the charges for the *prisoners' maintenance*, which depend on the existing price of provisions, &c. It is now *one shilling and threepence a-day for the males, and sevenpence for the females.* There are *few who do not earn above two shillings.* The marble sawing and manufacturing of nails are the most lucrative employments followed in the prison. *Several* were pointed out to us, who earned at these occupations *above a dollar*, and *one* in particular whose daily labour averaged *one dollar and a half.*"

No. 3. Ib. p. 48. — "Some have appropriated the proceeds of their labour, while in confinement, to the support of their families; and several, on leaving the prison, have received 40 or 50 dollars (4s. 6d.) the overplus of the profits of their labour, and with this capital turned out honest and industrious members of society."

2. *New York House, instituted* 1790.

No. 4. New York; 1802: Eddy, p. 94. — "The convicts have now become more skilful workmen, and can perform more labour, and to greater advantage, than heretofore."

Observations.—In this more recent prison, the economy, it appears, had not yet attained to such a pitch of perfection as to afford to the public a profit equal to the expense of the convict's maintenance. Under the Philadelphia system, no allowance was to commence in favour of any convict, till after the estimated expense of his share in the aggregate expense of the prison, or at least the greater part of that expense, had been reimbursed. The New York institution appears to have had disadvantages of its own to struggle with, which by the last accounts were not yet overcome; but which, by the same accounts, were in a way to be overcome. At Philadelphia, the charge against the convict appears to have been fixed at so low a rate, that from the first some surplus went into the pocket of the convict workman, the most unskilful not excepted. Whether the same policy has been pursued, and in the same degree, at New York, I have not found. I should rather expect to find, not; and in that case I am inclined to think that a little more liberality under this head might, even in the way of economy, have been attended with advantage.

Supposing this feature in the Philadelphia system to have been copied in New York, there being no surplus for the convict workman, the virtues of frugality and forecast would not in his instance find any ground to build upon.

3. *Penitentiary system: Panopticon mode.*

This spur to industry presented itself to me from the first as a very material implement in the apparatus of reformation. In 1793, when I was arranging with Mr. (now Sir Evan) Nepean (then under-secretary of state under Mr. Dundas) those terms of *contract*, which, without much variation, were afterwards approved of at the Treasury, and are printed in the 28th Report of the Committee of Finance — on this occasion, in my accepted *proposal*, on the ground of which we were proceeding, a fourth part having been specified by me as the share I was willing to allow, at the same instant *he* happened to mention a sixth part as the share he had thought of. Without hesitation I declined taking advantage of this facility. A fourth part (I recollected) was the share mentioned by Howard as that which, judging from his experience, he looked upon as capable of inspiring the requisite degree of *alacrity*. It went against me to give less than what had been recommended by so approved a judge: and, moreover, under my plan there was a particular reason for not falling short of that mark; since, for the fulfilment of the article relative to the *superannuation annuity*, I reserved to myself the power of retaining in my hands as far as the half of each man's allowance, in which case the share received by him, in the shape of *present* allowance, would be reduced to an eighth.

While yet on the road to *reformation*, the discussion of these points, though by no means unapposite to that head, has at the same time led us, though prematurely, into a corner of the field of *economy*. Just entered upon, and that but *en passant*, and already, my Lord, what a light breaks in upon it! In the account of expense compare this 0, or rather this *minus x* per annum, with the *plus* £46 of New South Wales.

IV. — General Depravity — *Prevalence of it in New South Wales, as attested in general expressions.*

No. 1. II. Collins, p. 2. *October* 1796. — "The frequent commission of the most atrocious crimes, together with the dissipated, turbulent, and abandoned disposition of the convicts, had more than ever at this time been manifest."

Observations. — Practical inference — resolution to construct the two prisons, above spoken of, at Sydney and Paramatta.*

No. 2. Ib. p. 3. *October* 1796. — "Far too many of them were most incorrigibly flagitious."

* Supra, p. 181.

Observations.—Practical inference: forming (as above) the most incorrigible of them into a *jail gang* (Letter I. p. 181.)

No. 3, Ib. p. 9. *October* 1796. — "The morality of the settlement is" expressly stated as "a point which he" (the governor) "could not venture to promise himself that he *should ever attain.*"

No. 4, Ib. p. 23. *February* 1797. — "It now appeared" by the "books" that "there were at this time not less than 600 men off *the store*, and *working for themselves* in the colony; forming a vast deduction from the public strength, and adding a great many chances against the safety of private and public property, as well as personal security."

Observations. — Written confirmation of the general proposition so often repeated: — under inspection (viz. such inspection as the nature of the institution admitted of,) bad enough; out of inspection, worse and worse. To "*working for themselves*," might have been added — *or supposed to work.*

No. 5, p. 53. *October* 1797. — "At this time, such" (observes the annalist) "was the increase of crimes, that thrice in this month was the court of criminal judicature assembled. Offences — murder, perjury, forgery, and theft."

No. 6, p. 100. *March* 1798. — "The utmost vigilance was constantly requisite to guard against robbers, both on land and water. It was impossible, in such a community as this, to have a police too strict, or to be sufficiently aware at all times of such a nest of villains. Many examples had been made; but after a few days had elapsed, they were forgotten; and every act of lenity and indulgence was found to be ruinous to the welfare and comfort of the whole. It was to be hoped, however, that the introduction of *more of the better*, and *fewer of the worst sort* of characters, would in *due time* give the balance a favourable turn."

Observations.—This, we see, is the ground, weak as it is, upon which, in the expectation of the late chief magistrate, as in the view of the late governor, all hope of moral improvement rests: the not applying the settlement to the only purpose, with reference to which it has ever been thought well of by anybody. *Quere* as to those "*worst*" characters — if not sent to this improved colony, what else would gentlemen wish to have done with them? If these most intractable of characters can be disposed of with advantage at a less distance and at a less expense, might not the same economy be applied to the less intractable ones?

My language would be somewhat different. Give me the worst in preference: the greater the difficulty, the greater the glory. If there *must* be a New South Wales, let rather the least corrupted go to New South Wales.

No. 7, Ib. p. 105. *April* 1798. — At this time the settlers are still spoken of as being "certainly undeserving of the attention which they met with from the governor."

Observations. — The settlers — not now, as in October 1792, "far too many;" but *the settlers:* — the settlers in general. These settlers, however, were the flower of the flock: the class, in whose instance the possession of permanent property — a sort of landed property, such as the nature of a government completely arbitrary admitted of, together with a portion of appropriate stock — would, according to received theories, afford that sort of security for good behaviour which it is in the power of property in such a state of society to give; and who, as often as the occasion recurs for mentioning them, are notwithstanding, and without any discrimination, mentioned as the worst.

No. 8, Ib. p. 130. *October* 1798. — At this time after speaking of the wilful burning of a building at *Sydney*, used as a *church* and *school* (of which afterwards), "this circumstance," it is observed, "must impress upon the mind of every one who may read" this account, to what a dreadful state of profligacy "the colony had arrived; which, alarming as it was, might have been still worse, had it not been for the *civil police*, which fortunately had been established: for a more wicked, abandoned, and irreligious set of people, had never been brought together in any part of the colony. The hope of their amendment seemed every day to lessen."

Observations. — No travelling without a passport, &c. &c. A sort of system of general imprisonment *within the rules:* a system, which having necessity for its justification, was not the less subject to endless vexations, oppressions and abuses.

No. 10, Ib. p. 210. *May* 1799.—*Backsliders.* At this time mention is made of a convict (Robert Lowe,) one of a number who, for particular instances of good behaviour on shipboard, "had received conditional emancipation, and been allowed to provide for their own maintenance." "*Few* of *these people*, however," it is added, "*were in the end found to merit this* reward *and indulgence*, as their future (*i. e.* subsequent) conduct had proved."

Observations. — Whatever symptoms of previous good dispositions had at any time manifested themselves among the convicts while subject to such degree of inspection as the economical arrangements afforded, were scarce ever found capable of maintaining themselves against the corruptive effects of the state of society there established: a society composed of such characters, exempted from all restraints.

No. 11, Ib. p. 216. 2*d July* 1799. — Still the older the settlement, the more universal

the depravity, and the more authentic the evidence of it. Two men and a woman had just been hanged for a murder committed on the body of a kind and generous friend (one of the missionaries,) to save the repayment of a sum of £10 lent by him to his murderers. "The abandoned state in which the settlement was *at this time*," continues the annalist, "cannot be better understood than by a perusal of the following orders:"— The principal mischief mentioned is the "late increased number of nocturnal robberies." Assigned cause—on the part of the *petty constables* and *divisional watchmen*, either extreme negligence or complicity with the malefactors. These subordinate magistrates were the elect among the men of property in the colony.* Remedies proposed — subscription for rewards, and a system of universal vigilance, commensurate to the universal insecurity.

Of these orders, it is stated "that they seemed to have been attended with some effect," because some vagrants were taken up in consequence. The effect, however, seems not to have been very great, since a statement comes immediately after it — that still "alarming depredations were nightly committed upon the live stock of individuals."

No. 12, p. 277. *December* 1779.—The history of this year closes with an ejaculation — "May the annalist, whose business it may be to record in future the transactions of the colony, find a pleasanter field to travel in, where his steps will not be every moment beset with murderers, robbers, and incendiaries!"

No. 13, p. 296. *June* 1800. — Mention having been made of executions, "the number of robbers and sheep-stealers" is mentioned as "still increasing, notwithstanding the late executions." Whereupon comes a question — "Can it be wondered at, that *so much profligacy prevailed in every part of the settlement?*"

Observations. — Here or hereabouts (only four months later) concludes the regular part of the history — the part chronologically arranged. The intelligence by a vessel that quitted the colony at a posterior date (August 1801) consists of nothing but a few scattered articles, mostly without distinction of date.

2. General Depravity *continued—Females.*

No. 1, p. 121. *July* 1798. — "Great complaints were now made of the profligacy of the women, who, probably from having met with more indulgence on account of their sex than their general conduct entitled them to, were grown so idle and insolent, that they were unwilling to do anything but nurse their children, an excuse from labour which very few were without. Were their value to be estimated by the fine children with which they had increased and multiplied the numbers in the settlement, they certainly would have been found to deserve every care and attention as useful members of society, but their vices were too conspicuous and prominent to admit of much palliation."

Observations. — Among these fine children a curious enough topic of inquiry would be, How many legitimate? how many illegitimate? — Another, though not quite so ascertainable, Among the legitimate, how many who had for their fathers the husbands of their mothers?—The managers of the "improved colony," here at home, had they received any such information, my Lord? had they used any endeavour to obtain it? were they afraid of receiving it? or was it beneath their care?†

No. 2, p. 123. *August* 1798. — *Positively* bad in July — another month, and they are become so in the *comparative* degree — "the women, to their disgrace," says their histo-

* II. Collins, pp. 8, 64.

† It cannot have been a secret to them. In the unpublished book, entitled *Panopticon*, printed in 1791, I find in page 141, *on Separation*, &c. the following passage: — "Turn now to New South Wales: 2000 convicts of both sexes, and 160 soldiers, not to speak of officers, jumbled together in one mass, and mingling like beasts: in two years, from 14 marriages, 87 births: the morals of Otaheite introduced into New Holland, by the medium of Old England."

After this I find a reference as follows:—"See Governor Phillips' account of the settlement, 4to. 1791, pp. viii. 67; Mr. White's ditto, 4to. 1790, and extracts of letters and accounts printed and laid before the House of Commons in pursuance of an order of April 8th 1791, p. 3."

November 1802.—I find now, my Lord, I ought to beg pardon of the beasts, since by subsequent accounts there have been times in which, in point of decency, as far as depends upon clothing, the four-footed race have had greatly the advantage.

No. 1, II. Collins, p. 101, March 1798. — "Provisions ... stores— 16 *months* since the last were received. A few slops were served to the male convicts in the beginning of this month, they being *nearly naked*, and the store unable to supply them with covering."

No. 2, Ib. p. 142, January 1799.—"The convicts in general had suffered much through want of clothing and bedding. Indeed, during the late harvest, *several gangs* were seen labouring in the field as *free of clothing of any kind* as the savages of the country. This had made them insolent, and anonymous letters were dropped, in which were threatenings of what would be done at the proper season."

Nakedness, and thence insolence: — and the blame, my Lord — where is it? With those who wore no clothes because they could get none? or with those who left them without clothes?— Suffer till you rot, suffer without complaint—no notice taken: complain — notice taken that you are insolent. Harsh forms excepted, could not your Lordship's recollection furnish you with something like another instance?

rian at this time, "*were far worse than the men.*"

No. 3, p. 128. *October* 1798.—In speaking of the *seamen* belonging to "some of the whalers that were in the harbour," the *women* of the colony, along with the *spirits* of it, are mentioned as the two temptations so peculiarly calculated "*everywhere*" to lead them astray.

Observations.—Everywhere? Yes, so far as concerns certain vices, such as idleness, prodigality, and improvidence; but not everywhere into crimes. It is only in New South Wales that incontinence exposes a man necessarily and uniformly to the seductions of women "*far worse than the men*"—the men of New South Wales, *i. e.* far worse than a gang of robbers, burglarers, murderers, and incendiaries.

No. 4, p. 138. *Nov.* 1798.—At this time, "the complaints which were daily made of the refractory and disobedient conduct of the convict women rendered it absolutely necessary" (it is said) "that some steps should be instantly taken to make them more clearly understand the nature of their situation, and the duties they were liable to perform:"—*Semper eadem*, worse and worse.

No. 5, p. 218. *3d July* 1799.—Bad beyond endurance. The opinion above given is not peculiar, either to the late chief magistrate, writing at a distance from the colony, or to his informant on the spot. It is proclaimed on the spot in public orders by the highest authority in the place. "The continual complaints which are made of the conduct of the female convicts require" (says the governor in his order of this day) "the most rigid and determined discipline, with such characters, who, to the disgrace of their sex, are far worse than the men, and are generally found at the bottom of every infamous transaction that is committed in the colony."

No. 6, p. 272. *November* 1799.—Speaking of divine service on Sundays, "The women" (it is said) were also directed to be more punctual in their appearance; for these still availed themselves of the indulgence which as women they had been treated with, seldom thinking themselves included in the restrictions that were laid upon others."

No. 7, p. 284. *February* 1800.—This month exhibits a particular example of the effect of such characters, not upon their fellow-convicts only, but also upon the soldiery. "One of these people, a quiet well-disposed young man, fell a victim to an attachment which he had formed with an infamous woman, who, after plundering him of everything valuable that he possessed, turned him out of the house to make room for another. This treatment he could not live under; and placing the muzzle of his gun beneath his chin, he drew the trigger with his foot, and, the contents going through his neck, instantly expired."

No. 8, p. 290. 14*th April* 1800.—It was in order to make an addition to the numbers of this sex, elsewhere the better half of the species, but in this "improved" colony "*far the worst*," that on this day the Speedy whaler is mentioned as arriving from England with 50 "female convicts; and what were much more *welcome* and *profitable*" (observes the historiographer,) "832 casks of salt provisions, which enabled the governor once more to issue a full ration." Profitable? Yes: welcomeness depends on appetites and tastes.

V. General Depravity — *Particular Exemplifications.*

No. 1, p. 4. *October* 1796.—At this time, after speaking of "a murder committed by a man on the person of a woman with whom he cohabited,"—"This" (it is added) "made the fifth circumstance of the kind which had occurred within the last twelve months; and so excessively abandoned were the people, that it was scarce possible to obtain sufficient proof to convict the offenders."

No. 2, p. 196. *January* 1799.—A burglary committed at this time in the house of the acting commissary (the head-keeper of the public stores) is no otherwise worth distinguishing than as it shows the audacity of the delinquent, and the insecurity of those abodes and masses of property which would naturally be the best guarded and most secure.

No. 3, p. 197. *January* 1799.—This next page affords an occurrence, distinguished from the herd of crimes by two circumstances—the magnitude of the property stolen, and the multitude of the delinquents associated. "Before this court" (a court held on this day) "was brought *part* of a *nest of thieves* who had lately stolen property to the amount of several hundred pounds."

Observations.—As in the first part, so in this second, the history of "the improved" and ever-improving colony has, for its chief ingredients, a *pot pourri* of crimes. Giving, if without particular selection, any further additions to the bead-roll of individual offences, I might be accused, though in another sense, of adding piracy to the list. Dropping all such comparative peccadillos as robbery and burglary, I will therefore commit no further trespass on the respectable historian's well-earned rights of authorship than by picking out the cases of incendiarism as I find them rearing their heads above the herd of ordinary crimes.

VI. Depravity — *Particular Exemplifications — Incendiarism.*

No. 1, p. 17. *January* 1797.—"The governor, on his return from his excursion, had

the mortification of seeing a stack, containing about 800 bushels of wheat, burnt to the ground. This happened at Toongabbe, *near which place the country was everywhere in flames*, and where much wheat belonging to government was stacked. By the accidental vicinity of a jail gang, and assistance bought of them by a universal pardon, other stacks were saved. Although *at this season of the year*," continues our author, "*there were days when, from the extreme heat of the atmosphere, the leaves of many culinary plants growing in the gardens have been reduced to powder*, yet there was some ground for supposing that this accident did not arise from either the heat of the weather, or the fire in the woods. *The grain that was burnt was the property of government, and the destruction of* 800 *bushels of wheat made room for that quantity to be received into the stores from the settlers who had wheat to sell to the commissary:* there were, moreover, at this time, some ill-designing people in the country, who were known not to have much regard for the concerns of the public. An inquiry was set on foot to discover, if possible, the perpetrators of this mischief, but nothing could be made of it."

Thus far our historian. Two other points—the impossibility of obtaining evidence, and the nature of the climate, devoting of itself the fruits of industry to the flames — will be noticed elsewhere.

No. 2, p. 69. *December* 1797. — "Some time in this month, the house of John Mischam, a *settler* in the district of Concord, was attacked by three villains, and set on fire, together with a stack of wheat which he had just completed and secured against the weather. This unfortunate man was indebted about £33, which the contents of his wheat-stack would have paid off; but now, besides being very much beaten, he had the world to begin again, with a load of debt which this untoward accident would much increase. The man himself knew not to what cause to attribute it; and he was as ignorant who were his enemies, for two of them had blackened their faces, and to the third he was a stranger."

No. 3, p. 72. *December* 1797. — "The weather was now become exceeding hot; and as, *at this season of the year, the heat of the sun was so intense that every substance became a combustible, and a single spark, if exposed to the air, in a moment became a flame, much evil was to be dreaded from fire.* On the east side of the town of Sydney, a fire, the effect of intoxication or carelessness, broke out among the convicts' houses, when three of them were quickly destroyed; and, three miles from the town, another house was *burnt by some runaway wretches*, who being displeased with the owner, took this diabolical method of showing it."

No. 4, p. 129. *October* 1798. — "Between seven and eight o'clock in the evening of this day, *the church* on the east side of the cove was discovered to be on fire. Every assistance, as far as numbers could be useful, was given, but ineffectually; for the building being covered with thatch, which was at this time exceedingly dry and combustible, it was completely consumed in an hour.

"This was a great loss, for during the working-days of the week, the building was used as *a school*, in which from 150 to 200 children were educated, under the immediate inspection of Mr. Johnson, the clergyman. As it stood entirely alone, and no person was suffered to remain in it after the school hours, there was not any doubt that this atrocious act was the effect of design, and the consequence of the late order which had been given out, and had been rigidly executed, enforcing attendance on divine service; and in the view of rendering, by the destruction of the building, the Sabbath a day of as little decency and sobriety as any other in the week."

No. 5, p. 132. *October* 1798. — "On the evening of the 11th, another fire happened in the town of Sydney, which, but for a great deal of care and activity, might have burnt all the houses on the east side. A row of buildings, which had been lately erected for the nurses and other persons employed about the hospital, was *set on fire* and totally consumed. The flames very nearly reached the boat-yard, in which were many concerns of value."

Observations. — Taken by themselves, the words "was set on fire," suggest the idea of the wilful act of man; but as nothing is said of rewards offered, or other endeavours used, for the discovery of the authors of the mischief, possibly this occurrence was not meant to be understood as belonging to the calendar of crimes. In the next article, however, where the mischief is expressly referred to human will as its cause, the expression is the same—"*was set on fire*,"—and nothing is said about reward, any more than here.

No. 6, p. 197. *January* 1799. — "On the night of the 11th, between the hours of eleven and twelve, the *public gaol* at Sydney, which cost so much labour and expense to erect, was *set on fire*, and soon completely consumed. The building was thatched, and there was not any doubt of its having been done through *design*. But, if this was the fact, it will be read with horror, that at the time there were confined within its walls 20 prisoners, most of whom were loaded with irons, and who with difficulty were snatched from the flames. *Feeling for each other was never imputed to these miscreants, and yet, if several were engaged in the commission of a crime, they have seldom been known to betray their companions in iniquity.*"

Observations. — What a picture of society! The bond of connexion not sympathy, but antipathy — not sympathy for one another, but antipathy to government, the common enemy.

No. 7, p. 277. *December* 1799. — "About ten o'clock of the night of the same day, the log gaol at Paramatta was wilfully and maliciously set on fire, and totally consumed. The prisoners who were confined were with difficulty snatched from the flames, but so miserably scorched, that one of them died in a few days. This building was a hundred feet in length, remarkably strong, and had been constructed with much labour and expense."

"The rewards which had been formerly held out upon similar occasions, were now offered to any man or woman who would come forward with evidence."

Observations. — Rewards upon rewards, and always with the same success. A feature so remarkable and characteristic may furnish matter for a separate head.

Of all crimes, those excepted which, by striking at the root of government itself, threaten the community with the complicated and unlimitedly extensive miseries of foreign or civil war, *incendiarism* may be set down as the most pernicious. If *wilful inundation* be likewise to be excepted, it is only in the comparatively few particular situations, in which, by the removal of some barrier opposed to the force of waters, the wickedness of a rash hand may plunge an indefinitely extended tract of country in a ruin still more extensive than can be brought upon it by the destructive power of fire.

Wide-spreading as the mischief *of the first order* is but too apt to be, the mischief *of the second order* is sure to be still more so. While individuals in any number may have been involved in the actual past calamity, no individual whatever within the reach of the report can be secure against the terror which the idea of future possible, and to appearance more or less probable, calamities of the like kind, cannot but inspire — *exitium ad paucos metus ad omnes.*

The final causes, or generating motives, capable of giving birth to it, are prodigiously diversified. The specimen your Lordship has just been seeing is not a scanty one. *Enmity, sport, appetite for gain*, may be set down as the most common: and among these, enmity, if not the most frequent, is the most obvious.

Sport, by no means an unexampled one, is to all but the abandoned perpetrator the most horrible and terrific. From the incendiary, whose hand is not put in motion but by enmity, those alone have to fear whose misfortune it is to have excited, or to stand connected in a certain way by vicinity of possession with some one who has excited that passion in his breast. But, from the hand in which, while spreading destruction in this its most diffusive shape, the force of the social and restraining motives has not proved a match for so pigmy a passion as mere sport — and this, too, a motive which requires not, as *enmity* does, any particular relation or incident to bring it into action — from the assaults of such a hand, where is the individual that can call himself safe? Who was safe under Nero? who was safe under Alexander and Thaïs when in their cups?

Where *appetite for gain* is the generating motive, it can only be in virtue of some special relation, most commonly of the *commercial* kind, the effect of which is to put into the hands of a particular individual a relative *profit* derived from an event, the effect of which is to produce, with reference to the general mass of property, a mere *loss*. Thus in a case but too often exemplified, a man who has insured his house for more than it is worth, may derive a profit from the destruction of it. Thus again, in a case (as per No. 1) which could in no other place have found existence so easily as in New South Wales, a man who has a commodity to sell may, without the intervention of any such source of special relation as a preceding *contract*, derive a gain from the destruction of a stock of the same sort of commodity, whether in the hands of the consumer (as in that case) or in the hands of a rival dealer.

In fact, there is scarce a propensity in human nature, that, by one accident or other, may not, in minds suitably disposed, lead to the commission of this crime. Any object which, by thwarting this or that *propensity*, presents itself as a source of this or that *uneasiness*, or as an obstacle to this or that *pleasure* — every such object, so it be but of a nature easily subjected to the power of the devouring element, is capable of putting in action a generating motive, adequate to the production of this crime. It is in this way, that not *jails* only (as per Nos. 6 and 7,) but *schools* and *churches* (as per No. 4) have found incendiaries in New South Wales.

In that privileged seat of depravity, scarce a heart, that in the vulgar motive of enmity (not to speak of motives of mere casual occurrence) may not at any time experience a generative power, adequate to the production of this crime. In the abstract entity *government*, each subject beholds there, not as elsewhere, a protector, but an enemy: and that ideal enemy he sees embodied and made flesh in the persons of as many individuals as that government has functionaries.

Even in England, cases are not wanting, where a sort of blind malignity — a mixed propensity, compounded of sport, envy, and despair — has not only without any special provocation, but without any assignable advantage in any shape, given birth to this

crime, in many a deluded breast, which till that fatal moment had known no guile. In times of scarcity, destruction is the grand remedy of an unthinking populace: and on these occasions *fire*, the most commodious of all instruments, is seldom suffered to lie idle. But *scarcity* — simple *scarcity* — is not so frequent in England as *famine* itself not only has hitherto been, but (as your Lordship, I believe, will see) may in reason be ever expected to be in New South Wales.

The speculation is not an idle one, since the greater the number of the motives, each adequate of itself to the production of the offence, the greater at all times the number of chances that any given hand will, by falling within the sphere of action of some one of all these forces, be drawn into the commission of that offence. In New South Wales, incendiarism (as your Lordship sees) is produced by motives which would scarce lead to it anywhere else.

Motives are nothing without *facilities*. Facilities, to a degree unexampled elsewhere, are afforded (your Lordship has seen) by the very nature of the climate; while the means of preventing the mischief, or so much as confining it within any given limits, on a soil where every blade is tinder, are not within the reach of industry or art.

On both accounts — on all accounts — this highest upon the scale of ordinary crimes — this outrage, of which murder forms oftentimes but a part — this cause of ruin, by which the very existence of the whole colony—stock, subsistence, inhabitancy — is, in such a situation, at all times rendered precarious — incendiarism, in a word, has never in any other country been nearly so frequent as it has been, and from the very nature of the case may ever be expected to be, in New South Wales.

At present, it is only in a *moral* point of view that the mischief claims our notice: hereafter, under the head of *Economy*, it may be matter of inquiry, how far, amidst so many ever-probable causes of destruction, of which in such a country so inhabited this is but one, subsistence can be regarded as tolerably secure, and whether it be worth while spending fourscore thousand pounds a-year or so, in combustibles for bonfires at such a distance.

VII. Remedies unavailing — *Spiritual.*

No. 1, p. 3. *October* 1796. — "Directing his attention also toward the morality of the settlement, a point which he could not venture to promise himself that he should ever attain, he [the governor] issued some necessary orders for enforcing attendance on divine service, and had the satisfaction of seeing the Sabbath better observed than it had been for some time past. But there were some who were refractory. A fellow named Caroll, an Irishman, abused and ill-treated a constable who was on his duty ordering the people to church, saying that he would neither obey the clergyman nor the governor: for which, the next day, he was properly punished."

No. 2, p. 51. *September* 1797.—"A church clock having been brought to the settlement in the Reliance when that ship arrived from England, and no building fit for its reception having been since erected, preparations were now making for constructing a tower fit for the purpose; *to which might be added a church*, whenever at a future day the increase of labourers might enable the governor to direct such an edifice to be built."

Observations.—In the first place the *ruffle:* — the shirt to follow it — one time or other, or never, as it might happen. Neither in the literal, nor therefore in the figurative sense, does *edification* appear to have been any great object with governors in the improved colony, any more than with the governed. To speak candidly, why should it have been? Of what use could the externals of religion be, in a community in which the only emotions they could reasonably be expected to give rise to were those of hatred and contempt? Better no church, than to be burnt down; better no service, than to be scoffed at.

No. 3, p. 122, 123. *August* 1798. — "The abandoned and dissipated disposition of most of those who were or had been convicts, so much to be regretted and so often mentioned, was particularly manifest in a shameful abuse of the Sabbath, and a profane ridicule with which everything sacred was treated. A conduct so derogatory to every Christian principle had from time to time been severely reprobated, but it had now arrived at a height that called for the exertion of every advocate for morality to subdue. Observing that instead of employing the Sunday in the performance of those duties for which that day was set apart, it was passed in the indulgence of every abominable act of dissipation, the overseers of the different gangs were strictly ordered to see their men mustered every Sunday morning, and to attend with them at church. The superintendents and constables were to see this order complied with, and that the women (who to their disgrace were far worse than the men) were strictly looked after, and *made* to attend divine service regularly. And as example might do something, the officers were not only to send a certain number of their servants, but they were also called upon, civil and military, to assist in the execution of this order; to the meaning of which the magistrates were required in a particular degree to pay their attention, in *compelling* a due obedience thereto, by preventing the opening of the licensed public-houses during the hours of divine service, as

well as any irregularity on the day appropriated to the performance thereof."

Observations.—This was "*compelling them to come in*" with a vengeance: but to what use, or with what fruit?—where were the *wedding garments?*

As to the fountains of liquid poison, if they could be sealed up—sealed up to any purpose—at church times, why not at other times, and for ever?—But as to this, see *Drunkenness.*

No. 4, p. 129. 1*st October* 1798.—"Between seven and eight o'clock in the evening of this day, the *church* on the east side of the Cove was discovered to be on fire. Every assistance, as far as numbers could be useful, was given, but ineffectually; for the building being covered with thatch, which was at this time exceedingly dry and combustible, it was completely consumed in an hour.

"This was a great loss; for during the working days of the week, the building was used as a *school*, in which from 150 to 200 children were educated, under the immediate inspection of Mr. Johnson, the clergyman. As it stood entirely alone, and no person was suffered to remain in it after the school hours, there was not any doubt that this atrocious act was the effect of design, and the consequence of the late order which had been given out, and had been rigidly executed, enforcing attendance on divine service, and in the view of rendering, by the destruction of the building, the Sabbath a day of as little decency and sobriety as any other in the week. The perpetrators of this mischief were, however, disappointed in their expectation; for the governor, justly deeming this to have been the motive, and highly irritated at such a shameful act, resolved, if no convenient place could immediately be found for the performance o. public worship, that instead of Sunday being employed as each should propose to himself, the whole of the labouring gangs *should be employed on that day in erecting another building for the purpose.* It happened, however, that a large storehouse was just at that time finished; and not being immediately wanted, it was fitted up as a church; and thus not a single Sunday was lost by this wicked design."

Observations.—*On the Sabbath, all work, and no devotion,* cries the accusing angel.—Work? Yes, answers the recording angel; but holy work, work in order to devotion. What a conflict between the letter and the spirit!—*Non in me tantas componere lites.* I leave it to the Saundersons of the age.

No. 5, p. 272. *November* 1799.—"The very little attention which had long been, and continued to be shown to the duties of religion, and the want of that decency and respect which were due to the return of the Sabbath, were now so glaringly conspicuous, that it became *necessary to repeat the orders,* which had indeed often been given upon that subject, and again to call upon every person possessed of authority, to use that authority in *compelling* the due attendance of the convicts at church, and other proper observance of the Sabbath. The women were also directed to be more punctual in their appearance; for these still availed themselves of the indulgence which, as women, they had been treated with, seldom thinking themselves included in the restrictions that were laid upon others."

Observations.—It would be an amusing sight in some respects, if it were not in other respects so melancholy an one, to see the governor thus fighting the demon of irreligion—fighting him with the same straws with which your Lordship will behold him presently fighting the hydra of drunkenness.

No. 6, p. 299. *August* 1800.—"*As if in defiance of the various orders* which had been given to enforce a due attendance on Sunday at divine service, *that day still continued to be marked by a neglect of its sacred duties,* an order was again given out on the 25th, pointing out the duties of the superintendents, constables, and overseers in this particular instance, and assuring them that a farther neglect on their part would be followed by their dismission from their respective situations."

Observations.—At this period, along with the *civil* and *military,* ends the *ecclesiastical* history of the "improved" colony. What effect has since been produced by these fresh orders succeeding to former orders, as often *defied* as issued, may be left to conjecture—to conjecture grounded on unvarying experience, as well as the unchangeable nature of the case.

3. *Per Contra*—PENITENTIARY SYSTEM

No. 7. *Philadelphia,* 1793. Lownes, p. 89—"Their [the prisoners'] decorum and attention at times appointed for religious worship, have been obvious, and are such as have obtained the approbation of all those who have been witnesses to it."

VIII. REMEDIES UNAVAILING—*Temporal.*

1. *Punishments and Rewards*—*Evidence unobtainable.*

This head will consist in good measure of recapitulations.

No. 1, p. 4. *October* 1796.—"Five murders in the year," as above, page 220. Strong presumptive proof adduced; but the kind of evidence necessary to establish the offence withheld."

No. 2, p. 69. *December* 1796.—"The house and stock of a poor settler involved in debt, purposely destroyed by fire. Emancipation, with a settlement, offered, and offered in vain, for evidence."

No. 3, p. 110. *May* 1798.—"A fine bull

calf belonging to an officer was about this time taken from the herd; and though considerable rewards were offered for the discovery of the offender, nothing transpired that could lead to it. This was a serious evil; for the care and attention of years might in one night's time be destroyed by the villany of a few of these lawless people."

No. 4, p. 130. *October* 1798. — Burning of the church and school at Sydney. — Reward of £30, with emancipation if a *non-expiree;* return to England, if an *expiree.* "But it was seen with concern," adds the historian, "that *rewards and punishments alike failed in their effect.*"

No. 5, p. 197. *January* 1799. — Speaking of a number of "*executions and punishments*" that took place at this time, "it might be supposed," observed the historian, "that they would have operated as a check to the commission of offences; but they appeared to be *wholly disregarded.*"

No. 6, p. 268. *October* 1799. — "About this time a young ox was missing from the government stock-yard at Tongabbe, and there was every reason to suppose it had been driven away and slaughtered. . . . In the hope of discovering the offender, a notice was published, holding out a conditional emancipation, and permission to become a settler, to any convict for life, who would come forward with the information necessary to convict the persons concerned in this destructive kind of robbery; and an absolute emancipation, with permission to quit the colony, to any one transported only for a limited time; but nothing was ever adduced that could lead to a discovery."

No. 7, p. 276. *December* 1799. —Burning of the jail at Paramatta, with one of the prisoners in it.—" Rewards such as had formerly been held out."—Same exertions, same success.

No. 8, p. 297. *July* 1800.—" The prisoners who were left for execution at the end of the last month suffered death, two of them at Sydney on the 3d, and the third at Paramatta on the 5th of this month. If examples of this kind could strike terror into the minds of the spectators, they certainly had not lately been without these salutary though dreadful lessons."

The inaccessibility of evidence presents two very material observations.

One is — that in regard to the degree of profligacy prevalent in New South Wales, the criminal calendar, an alleged copy of which is, I observe, extant in print, would, without a proper caution, be apt to give rise to false inductions, presenting the state of society under an aspect by much too favourable. If every individual offence committed, whether *prosecuted* or not, *detected* or not, were *registered* in it, no; — if the number of offences *committed* were in no greater a *ratio* there than in England, to the number of offences *prosecuted* for, no. But in a community, in which the members are, almost to a man, in a league against government — where each criminal has almost as many protectors, if not accomplices, as he has neighbours, the number of crimes *on record*, be it ever so small, affords no indication of any correspondent paucity in the number of crimes *committed.*

Some cases indeed there are, in which, though the criminal remains unprosecuted and even undetected, the existence of the crime will commonly be known, or at least suspected, and in both cases recorded. Murder, at any rate, is of the number. But in the case of a crime of the predatory class, unless accompanied by force to the person or violence to the habitation or its contents, the prevalence of the crime may be continual and universal, without any specific *trace* of it, and therefore without any specific *mention* of it.

The other remark respects the degree of depravity indicated by the universality of this mutual adherence, independently of the actual crimes resulting from it. In the ordinary intercourse of life, fidelity to engagements is a virtue: why? because in the ordinary intercourse of life, among the engagements taken there is not one in a thousand, the execution of which is not beneficial to the community upon the whole. That feature of negative sociableness which disposes men not to obstruct or thwart one another in their enterprises, even this, too, is, as far as it goes, a virtue: why? because in ordinary life, among the enterprises engaged in, great and small, there is not one in a million, the success of which is not beneficial to the community as before. But for the same reason that, in the case of innocent and beneficial engagements and enterprises, fidelity and disposition to mutual adherence are *virtues:* in the case of criminal ones they are *vices.* A sort of honour may be found (according to a proverbial saying) even among *thieves.* Good, as an *observation;* that is, *true* in fact; but bad if the fact be regarded with complacency, and either the thieves themselves, or the society infested by them, are considered as being the better for it. That honour does exist among thieves is not to be doubted; for thieves are a society to one another, and it is only by honour that any society can be kept together. But to regard such honour with complacency, to speak with reprobation of every instance of the absence of it, to speak with eulogium of every instance of the manifestation of it, is indeed a natural enough prejudice, but, in some of its consequences, a very pernicious one. Without honour, society even among thieves could not exist;—true, but the thing to be wished for is, that among thieves, in so

far as they are thieves, society never should exist. Of thieves, as of other men, the thing to be desired is, that they should observe the laws of honour in some cases, not observe them in others: observe them on the occasion of their honest engagements; not observe them on occasion of their dishonest ones: observe them in their ordinary dealings with other men; not observe them in their dealings with one another in their capacity of thieves. By whatsoever causes produced, infidelity to criminal engagements is *repentance;* and wherein is a man the better for being without repentance? To give birth to such infidelity—to purchase such repentance—is the object of every *reward* offered for he discovery of accomplices in crimes. To censure a man for the acceptance of any such offer—to commend him for the refusal of it—is to employ so much of the force of the popular or moral sanction, in a direction diametrically opposite to that of the action of the political sanction; diametrically opposite to the interest of society—of every society, but that of malefactors.

The application of this argument is susceptible of extensions: for example, subject to certain modifications, to the case of common *informers.* At present, let us content ourselves with applying it to the present case: the more pertinacious and extensive this species of sinister fidelity, the more intense and extensive and incorrigible, surely, is the depravity which it serves to indicate. If, indeed, in the case of this sinister fidelity, it were *sympathy*—sympathy on the part of the individuals as towards one another—that were in any degree the root of it, so far the inference would fail: but over and over again the absence of such sympathy, and that to a degree unexampled elsewhere, is attested as well by particular incidents as by general observations; the true root of this fidelity is—(so it appears throughout)—not in any sympathy on their part for one another, but in their *antipathy* to government—to the common bond by which society is held together.

2. *Police.*

No. 1, p. 8. *November* 1796.—"The useful regulation of numbering the different houses in the town of Sydney, particularly those in the occupation of the convicts, was followed up by another, equally serviceable, which directed the inhabitants of each of the four divisions of the town (for into that number it was portioned off) to meet, and from among themselves elect three of the most decent and respectable characters, who were to be approved by the governor, and were to serve for the ensuing year as *watchmen,* for the purpose of enforcing a proper attention to the good order and tranquillity of their respective divisions. Many of the soldiers being allowed to occupy houses for their families in the vicinity of the barracks, the commanding officer was desired to appoint his own officer for the military division of the town, and to order them to report to him." For the behaviour of these watchmen, see above, p. 219, where they are stated as guilty of "extreme negligence or complicity with the malefactors."

No. 2, p. 26. *March* 1796.—At this time, for any but officers, no travelling without a *passport:* the passport to be *inspected* in each *district* by a *constable:* penalty for being found without one, a month's imprisonment for the first offence, arbitrary punishment in case of repetition. "The frequent and unrestrained passing and repassing of idle and disorderly people from one part of the colony to another, and the mischievous correspondence which was kept up by such means, was productive of great evil. To check this as much as possible, *all persons,* the officers excepted, who were travelling from one district of the settlement to another, were required to furnish themselves with a *passport,* which on a proper application they would obtain without any difficulty. This was *to be shown to and inspected by the constables in each district;* and if found without it, they were to be *imprisoned* during a month for the first offence, and otherwise *punished* if it was repeated. *But the best local arrangements were set at defiance by those hardened vagabonds, who seemed daily to increase in number and in infamy.*" For the effect of this expedient, see the next title, No. 10, *July* 1799.

No. 3, p. 64. *December* 1797.—"The annual election of *constables* took place in this month. These municipal regulations were attended at least with the advantage of introducing something like a system of regularity into the settlement, than which nothing was more likely to check the relaxation which had lately prevailed in it." For the behaviour of these constables, see the next title, No. 7.

No. 4, p. 197. *January* 1799.—"Were it not evident that certain punishment awaited the conviction of offenders, it might be supposed that a relaxation of the civil authority had begotten impunity; but far otherwise was the fact: the police was vigilant, the magistrates active, and the governor ever anxious to support them, and with incessant diligence endeavouring to establish good order and morality in the settlement. *But such was the depravity of these people,* from the habitual practice of vice, that they were become alike fearless of the punishments of this or of the world to come."

3. *Functionaries corrupt—Servants worthless.*

No. 1, p. 60. *November* 1797.—"There

can scarcely be recorded a stronger instance of human depravity, than what the following circumstance, which happened in this month, exhibits. A convict who had formerly been a school companion with the Reverend Mr. Johnson, had been taken by that gentleman into his service, where he reposed in him the utmost confidence, and treated him with the kindest indulgence. He had not been long in his house before Mr. Johnson was informed that his servant, having taken an impression of the key of his store-room in clay, had procured one that would fit the lock: he scarcely credited the information; but being urged to furnish him with an opportunity, he consented that a constable should be concealed in the house on a Sunday, when all the family, this servant excepted, would be attending divine service. The arrangement succeeded but too well. Concluding that all was safe, he applied his key, and entering the room, was proceeding without any remorse to plunder it of such articles as he wanted, when the constable, seeing his prey within his toils, started from his concealment, and seized him in the act of taking the property.

"Thus was this wretched being, without 'one compunctious visiting of nature,' detected in the act of injuring the man who, in the better day of his prosperity, had been the companion of his youth, and who had stretched out his hand to shelter him in the present hour of adversity."

No. 2, p. 104. *April* 1798. — "The proprietors of this valuable article of stock [horses] were rather unfortunate in the care of it, notwithstanding the high price which it bore. The acting commissary lost a very fine mare, through the stupidity of an Irish servant, who put a short halter round her neck with a running knot by which she was strangled in the night; and information had been received of the death of two foals belonging to government. This accident proceeded from want of proper care in those who were appointed to look after them; but *unfortunately, though they were often changed, the change was never found to be for the better*."

No. 3, p. 105. *April* 1798. — "They [the settlers] laboured under another evil, which was the effect of an unbounded rage for traffic that pervaded nearly the whole settlement. The delivery of grain into the public storehouses, when opened for that purpose, was so completely monopolized, that the settlers had but few opportunities of getting the full value for their crops. A few words will place this iniquitous combination in its proper light. The settler *found himself thrust out from the granary by a man whose greater opulence created greater influence*. He was then driven by his necessities to dispose of his grain for less than half its value. To whom did he dispose of it? To the very man whose greater opulence enabled him to purchase it, and whose greater influence could get it received into the public store."

Observations. — The English of this seems to be, that those on whom it depended to choose, of whom the governor should make, these his purchases, gave the preference to those who would bribe highest.

No. 4, p. 111. *May* 1798. — "The deceptions and impositions which were daily in practice among the labouring part of the colony, to the great injury of the concerns of government, rendered it highly expedient that the governor, who had those concerns to attend to, should be assisted by trusty and active persons, in every situation where public works might be carrying on. Having made some discoveries of this nature in the department of the sawyers, he issued a public order specifying the hours which should be employed in every branch of public labour. This had by no means been the first attempt to check the impositions of these people; but it was found that *the private concerns of those who should superintend the various public works occupied so much of their time, that their duty was either wholly neglected, or carelessly performed*. This created such a relaxation of discipline, that *a repetition of orders and regulations* was from time to time published, to keep the labouring people constantly in mind that they were the servants of the crown, and remind those who were appointed to look after them, that they had neglected that duty which should ever have been their first and principal consideration."

No. 5, p. 134. *November* 1798. — "An instance of the fatal effects of misguided conduct, and a too late sense of criminality, occurred in the tragical end of Nathaniel Franklyn, the governor's steward. This man, whom he brought from England, had the whole care and management of the governor's domestic concerns entrusted to him. He had been repeatedly cautioned by his master against the many artful and designing acquaintances which he had formed in the town, and was pointedly desired to be aware of not suffering himself to be influenced by their opinions. It was proved that he had not had fortitude enough to withstand their solicitations, but had consented to rob the governor to a very considerable amount, abusing the confidence he had placed in him, and making use of his name in a most iniquitous manner. Of the infamy of his conduct he was at last sensible, and retiring into the shrubbery in the garden of the governor's house, shot himself through the head."

No. 6, p. 138. *December* 1798.—"On the 19th died very suddenly Mr. Stephenson, the storekeeper at Sydney. As his death was not exactly in the common way, so neither had been the latter part of his life — indeed all

that part of it which he had passed in this country; for, by an upright conduct and a faithful discharge of the duties of the office with which he had been entrusted, he secured to himself the approbation of his superiors while living, and their good name at his death.

"Stephenson *had been emancipated for his orderly behaviour*, and to enable him to execute the office of storekeeper."

Observation. — If I misrecollect not, this is the *single* instance of reformation mentioned by our historian, directly or indirectly, in the compass of the last five years — the period comprised in this his second volume.

No. 7, p. 139. *December* 1798. — "The annual election of constables recurring about this time, the magistrates were desired to be very particular in their selection of the persons returned to them for that purpose, as there was reason to fear, from the frequent escapes of prisoners from the different gaols, that *the constables had been tampered with so shamefully to neglect their duty.*"

No. 8, p. 196. *January* 1799. — "On the night of the 24th, the acting commissary's house was broken into and robbed of articles to a considerable amount. The thieves appeared to have got in at the office window, and loosened the bricks of a partition wall, by which opening they got into the storeroom, and, forcing the locks of the chests and trunks, carried away every thing that they could manage."

"*One evil among others, which attended the frequent arrival of ships* in the port, *was the ready market which these plunderers found for disposing of their stolen goods, the seamen not hesitating to become the purchasers on leaving the place.*"

No. 9, p. 210. *May* 1799. — "At the same court one man, Robert Low, was adjudged to corporal punishment and one year's hard labour, for embezzling some of the live stock of government which had been entrusted to his care. He was a free man, and had been one of the convicts who were with Captain Riow in the Guardian, when her voyage to New South Wales was unfortunately frustrated by her striking upon an island of ice; on account of which, and of their good conduct before and after the accident, directions had been given for their receiving conditional emancipation, and being allowed to provide for their own maintenance. *Few of these people, however, were in the end found to merit this reward and indulgence*, as their future conduct had proved; and this last act of delinquency pointed out the necessity of a free person being sent out from England to superintend the public live stock, with such an allowance as would make him at once careful of his conduct, and faithful in the execution of his trust."

No. 10, p. 219. *July* 1799. — "Still alarming depredations were nightly committed upon the live stock of individuals, and were doubtless effected by those *wandering pests to society, the regulations which had long since been established as a check to such an evil being wholly disregarded.* It was discovered that hogs were stolen, and delivered on the victualling days at the public store, without any inquiry being made as to whose property they were, or by whom delivered, any person's name which they chose to give in being considered by the storekeeper as sufficient to authorise him to receive it, although printed vouchers for the delivery of such pork (and grain likewise) were left at the store for the purpose of being signed by the party offering it. This certainly operated as an encouragement to the commission of these thefts; and it became necessary to order that such persons as attended the receipt of any of these articles at the store should direct whoever delivered them to sign the voucher of the quantity received by him; the governor being determined never to approve of any bill laid before him for that purpose, unless the commissary should produce the voucher properly signed by the person in whose name such bill was made out."

Observations. — By "*the regulations established as a check to those wandering pests to society*," I understand the regulations requiring *passports*, the measure above spoken of under the head of Police, No. 2.

No. 11, p. 267. *October* 1799. — "A number of the public labouring servants of the crown having lately absconded from their duty, for the purpose either of living by robbery in the woods, or of getting away in some of the ships now about to sail, that none of those concerned in the concealing them might plead ignorance, public notice was given, — 'That any officer or man belonging to the above ships, who should be known to have countenanced or assisted the convicts above alluded to in making their escape, would be taken out of the ship, and punished with the utmost severity of the law; and as the most strict and scrupulous search would take place on board, — for every convict which should be found concealed or suffered to remain on board without regular permission, so many of the ship's company should be taken out and detained for daring to encourage such escape.'

* * * * * *

"On the day this order was issued, the Hillsborough, which was moving out of the Cove, and preparing for sea, was strictly searched; and several convicts being found on board, they were brought on shore, and each received a severe corporal punishment. One of them was excused, on condition of his declaring who the people were that encouraged that concealment, and prepared hiding-

places for them. He accordingly deposed to *two of the seamen*, who were also brought on shore, *punished*, and afterwards drummed to the wharf, and sent back to their ship. The foregoing order was then published.

"How well it was attended to, and *what effect the punishment of the seamen* and *convicts produced*, were instantly seen. The *Hunter*, preparatory to a voyage to Bengal, where she was to freight with goods for the colony, went out of the harbour. A woman named Ann Holmes being missing, the governor ordered an armed boat from the Reliance to follow the ship, with some of the constables, and search her; with directions, if any person were found on board who had not permission to depart, to bring her into port again. Having found the woman, the ship was brought up the harbour, and secured.

"*Several of her crew having behaved in a most insolent and mutinous manner to the officer of the Reliance*, having armed themselves against the constables with cutlasses, and one of them having presented a musquet to the chief constable, they were secured, ordered to be punished on board their own ships, and afterwards turned on shore. But it was necessary to do something more than this; and a criminal court being assembled for the purpose, the *master of the ship* was brought to trial, charged with aiding and abetting a female convict to make her escape from the colony. As the offence consisted in aiding *a convict*, it was requisite to prove that such was the person found on board his ship; but upon referring to a list of the prisoners who were embarked in the *Royal Admiral*, the ship in which Ann Holmes had been sent out to New South Wales, no specific term of transportation was found annexed to her name. On the question, then, whether the master had aided a convict in making an escape, *he was acquitted, it not being possible by any document to prove that Holmes was at that moment a convict.* But the master was reprehensible in concealing any person whatever in his ship, and ought to have felt the awkwardness of his situation in being brought before a court for the breach of an order expressly issued a short time before, to guard him and others against the offence that he had committed.

"When the Hillsborough was searched, not less than *thirty convicts* were found to have been received on board, against the orders and without the knowledge of the officers, and *secreted by the seamen*. This ship and the Hunter, shortly after these transactions, sailed on their respective voyages."

No. 12, p. 331. *August* 1801. — "It appeared, on examining the registers of the several terms of transportation of the convicts, that the *clerks*, who necessarily had had access to them, had *altered* the *sentences* of about *two hundred prisoners, receiving a gratuity* from each, equal to *ten* or *twelve pounds*. This was a very serious evil; and proper steps to guard against it in future have been taken, both at home and in the colony." — *Quere*, Of how many hundred prisoners could the terms have been shortened by clerks in a *penitentiary-house?*

Observations. — "If the salt hath lost its savour, wherewith shall it be seasoned?"

At a former period, in more instances than one, the terms of the convicts, instead of an abridgment as here, obtained a prolongation. The cause of it was — not any activity on the part of any clerks or other persons in New South Wales, but the negligence (let us hope at least that it was nothing worse than the negligence) of certain persons here at home: ship after ship, convicts were sent out, and no calendar of their terms sent with them.* In England, the presumption is in *favorem libertatis*: at the Antipodes, where justice was turned topsy-turvy, it was naturally enough *in favorem servitutis.*

"We have no proof," says government there to these convicts — "gentlemen who sent you out have given us none — of our having a right to detain you — any of you — so much as a single day: therefore in the first instance we detain you — all of you — for life. To each of you we give an estate for life in banishment and bondage: yes, for life, in the first instance; defeasible indeed as to the bondage, by what lawyers call in England a possibility upon a possibility." Thus it was, that in New South Wales, gentlemen of the highest rank, with the help of gentlemen at home, tacked on, in a wholesale way, to the several legal, so many illegal portions of punishment — bondage and banishment together. In the case at present in question, gentlemen of an inferior rank, instead of tacking on illegal portions of punishment, struck off so many portions of legal punishment: not *in toto* indeed—bondage and banishment together—but bondage alone; in general, at least, leaving the banishment pretty much upon the same footing as they found it. Nor yet were the portions of bondage struck off freely and gratuitously, but for the valuable consideration of £10 or £12 a-head: in other words, part of the bondage was thus *compounded for*, and *commuted* into a fine. The fine, it is true, did not go immediately, nor, I fear, was intended ever to go, if it could safely be prevented from going into the proper reservoir for fines, the *privy purse*: to which having said *proper*, I am almost ashamed to add — the king's — but in this there seems little to distinguish these from other fines. Gentlemen acted in that behalf as so many self-constituted receivers and surveyors of the green wax: and as other

* I. Collins, p. 74; II. pp. 131, 212, 267.

receivers and surveyors of that same sort of wax might be expected to do, kept their own secret, kept everything, money and secret together—safe till called for. Neither indeed was the fine thus levied sufficiently public to have any very beneficial effect in the way of *example*: but in the way of *reformation*, and in the character of a remedy applied *pro salute animæ*, the effect of it could hardly have been greater, if levied by the purest ecclesiastical hands, or passed in and stored up in the regular official hive of the receiver and surveyor-general of his majesty's royal green wax as aforesaid.

Question (should Robin Hood ever come to life again) for the lyceum of Robin Hood: Which are most to blame? gentlemen in New South Wales, who without law have shortened servitude? or gentlemen at home, who also without law have lengthened it?

From former titles your Lordship has seen that New South Wales discipline is no source of *reformation* for convicts — that, è contra, it is a source of ulterior *corruption* for convicts: from this title your Lordship has seen, and in a variety of very extensive instances, that it is moreover a source of corruption for *honest men*. For government storekeepers, as per Nos. 3 and 10; superintendent, as per No. 4; stewards, as per No. 5; constables, as per No. 7; seamen in general, as per No. 8; seamen in merchant's service, as per No. 11; clerks in the government office, as per No. 12; soldiers, as per I. Collins, 303, 455, mentioned in my former letter, p. 195, and p. 209.

Thus and thus far in known instances: in another way, and in unknown instances without account, the spread of the corruption may have been in an indefinite degree more extensive. To so many numerous and important classes of his Majesty's subjects as are forced or tempted to make a house-of-call of the "improved colony"—to the king's army —to the king's navy—to seamen in private service, the nest of female convicts constitutes a constantly open school of mischief and depredation; a school in which the arts of theft, robbery, burglary, murder, and incendiarism, are taught by a set of school-mistresses of the very first order; of school-mistresses pronounced over and over again, upon the fullest experience, by the highest authorities, and most competent judges, to be "*far worse than the men*," far worse than thieves, robbers, burglars, murderers, and incendiaries.*

* In the note inserted p. 181 (Letter I.) the following head, intended for the third, was omitted by mistake. It will be found, I believe, not less apposite in this place.

III. *Soldiery corrupted by the Convicts—closer Inspection the only remedy.*

No. 1, p. 59, 60, 61. *March* 1789. "He [Hunt] accused *six other soldiers* of having been concerned with him in the diabolical practice of *robbing the store, for a considerable time past, of liquor and provisions in large quantities* . . . . *A connexion subsisted between them and some of the worst of the female convicts*, at whose huts, notwithstanding the internal regulations of their quarters, they found means to enjoy their ill-acquired plunder . . . . . . On the morning of their execution, one of them declared to the clergyman who attended him, that the *like practices* had been carried on at the *store at Rose Hill* by similar means, and with similar success. He named two soldiers and a convict as the persons concerned."

No. 2, p. 313, 314. *September* 1793.—"The foundation of another barrack for officers was begun in this month. For the privates, one only was yet erected; but this was not attended with any inconvenience, as all those who were not in quarters had built themselves comfortable huts between the town of Sydney and the brick kilns. This indulgence might be attended with some convenience to the soldiers; but it had ever been considered that *soldiers could nowhere be so well regulated as* when living in quarters, where *by frequent inspections* and visitings their characters would be known, and their conduct attended to. In a multiplicity of scattered huts, the eye of vigilance would with difficulty find its object; and the soldier in possession of a habitation of his own might in a course of time think of himself more as an independent citizen, than as a subordinate soldier."

No. 3, p. 425. *February* 1796.—"This intercourse had been strongly prohibited by their officers; but living (as once before mentioned) in huts by themselves, it was carried on without their knowledge. Most of them were now, however, ordered into the barracks; but to give this regulation the full effect, a *high brick wall, or an inclosure of strong paling round the barracks, was requisite: the latter* of these securities *would have been put some time before*, had there not been a want of the labouring hands necessary to prepare and collect the materials."

IX. Main Cause of Non-Reformation, Drunkenness. — *Universality and Incurableness of it in New South Wales.*†

No. 1, II. Collins, p. 9. *November* 29, 1796. — Speaking of three capital convicts, who had been executed for robbing the public stores, and three others who on conviction of the same offence had received a conditional pardon, "It was much to be lamented," continues the judge advocate, "that these people were not to be deterred by any example from the practice of robbing the public stores, which had of late been more frequent than heretofore, and for which there could not be admitted the shadow of an excuse — as the whole of the inhabitants of every de-

† A cause perhaps equally efficient is the *promiscuous aggregation*; and this being of the very essence of the colonization system, is still more palpably incurable than the drunkenness. But as this, in the character of a matter of fact, needs no proof, it would have been misplaced, if inserted among the heads under which the evidentiary matter stands arranged.

scription were at this very time on a full and liberal allowance of provisions and clothing, neither of which were in any scarcity in the settlement. *But the cause was to be found in the too great indulgence in the use of spirituous liquors*, which had obtained among them *for a considerable time past.* The different capital crimes which had lately been brought before the court of criminal judicature, together with the various petty offences that daily came under the cognizance of the magistrates, did not proceed from an insufficiency either of food or clothing, but from an inordinate desire of possessing, by any means whatsoever, those articles with which they might be able to procure spirits — "*that source*," as the governor expressed himself in an order which he published directly after these executions — "*that source of the misfortunes of all those whom the laws of their country* and the justice that was due to others *had launched into eternity, surrounded with the crimes of an ill-spent life.*"

No. 2, p. 18. *January* 18, 1797. — Speaking of the persons called *settlers* (the *expirees*, who took to farming on their own account,) and of the measures taken to reduce what was looked upon as excessive in the rate of wages demanded of them by such of their fellows as maintained themselves by serving them as labourers, he goes on and observes, "It must appear from this, that every necessary and useful regulation was suggested, that could promote the convenience and advantage of these people, who being in possession of land that yielded the most ample returns, nothing but the greatest worthlessness on their part could have prevented their getting forward and becoming men of property. That too many of them were of this description, will appear evident from its being notorious that *their crops were no sooner gathered than they were instantly disposed of for spirits*, which they purchased *at the rate of three, nay even of four pounds per gallon*, and of a spirit often lowered one-fourth or more of its strength with water."

No. 3, p. 49. *September* 1797. — On the 20th of this month, "the Deptford, a small brig, arrived from Madras with a cargo of goods upon speculation for the Sydney market. The spirit of trade, which had for some-time obtained in the colony, afforded an opening for adventurers to bring their goods to this settlement. The voyage from India was short and direct; and from the nature of their investments they were always certain of finding a ready sale, and an ample return upon the original invoice. But this intercourse was found to be pregnant with great evil to the colony; for *preferring spirits to any other article that could be introduced from India, the owners never failed to make the rum of that country an essential part of every cargo* which they sent upon speculation; and though every necessary measure was adopted to prevent *all* that arrived from being landed, yet such was the avidity with which it was sought after, that *if not permitted, it was generally got on shore clandestinely, and very few ships carried back any of what they had brought down.* To this source might be traced *all the crimes which disgraced, and all the diseases that injured, the colony.*"

No. 4, p. 71. *December* 24, 1797. — A particular anecdote, mentioned by the historiographer under this date, may serve to show the state of public opinion among the convicts, with reference to this most prolific of all vices: — "On the eve of Christmas-day, two young men, settlers on some land midway between Sydney and Paramatta, having been *boasting* of their respective abilities in drinking, regardless of the solemnity of the time, challenged each other to a trial of their skill: on which they were so deliberately bent, that *to prevent their being interrupted*, they retired to the skirts of a neighbouring wood* with a quantity of raw spirits, which they had provided for the purpose. Their abilities, however, were not equal to their boasting; for one of them died upon the spot, and the life of the other was fast ebbing when he was taken up. Had another hour elapsed, he too must have perished like his wretched companion. They had not been able to finish all the pernicious spirit which they had prepared, some of it remaining by them in a case-bottle when they were found."

No. 5, p. 80. *January* 20, 1798. — After having spoken, in p. 35, of a merchant ship called the Sydney Cove, that had been then lately wrecked in her voyage from Bengal to New South Wales on speculation, and of the dispatch of a vessel called the Francis to bring in the crew and what could be saved of the cargo, "On the 20th January 1798," continues our author, "the Francis returned with Captain Hamilton [the captain of the Sydney Cove] from the southward. Previous to his departure for the wreck of his ship, he had informed the governor that she had on board nearly 7000 gallons of spirits, and solicited permission to bring back a part with him in the schooner. The governor, *ever averse to the introduction of spirituous liquors*, would certainly have resisted the application; but it being generally known in the colony that a considerable quantity of this article had been saved from the wreck, and that the island abounded with kangaroos and birds, he conceived these circumstances not only to have conduced to *those desertions and captures of*

* "To prevent their being interrupted," not to prevent its being known, since their supposed abilities in this way were matter of *boast*.

boats which had been effected, but as likely to prove farther temptations to similar practices. He therefore determined to purchase the rum of Captain Hamilton, and as there was none in store *for the public service, to take it on account of government*. An agreement was accordingly entered into by the commissary, and 3500 gallons were brought round in the Francis."

Observations.—Quere 1*st*, How much more intoxication would be produced by a gallon of spirits taken on account of government, than by ditto of ditto taken on any other account? —*Quere* 2*d*, In what degree or respect is "the source of all the *crimes that disgraced, and all the diseases that injured, the colony*," &c. conducive to the *public service?* — *Quere* 3*d*, If by stolen boats or otherwise, spirits, when landed in Providence Island *by accident*, cannot be prevented from being smuggled into New South Wales, how can they, if landed on ditto, or any nearer and more convenient spot, *by design* and for this very purpose?

No. 6, p. 133. *October* 1798. — The observations made at this time by the governor respecting the state of things in a spot so often mentioned as by far the most fertile of all the settlements, may serve to show of how little avail are the most signal *geographical* advantages, when counteracted by this *moral* obstacle to all industry and all happiness: — "Towards the end of the month, the governor visited the settlers at the Hawkesbury, and while he was there made some useful regulations among the sawyers, *who had fixed their own portion of public labour*. He gave notice that a session should be held quarterly for settling all civil concerns, and made some other local arrangements, which, if attended to, would have conduced essentially to the welfare of the settlers, *whose farms he found promising plenty, but whose houses and persons wore the appearance of poverty and beggary, they converting all the produce of their farms to the unworthy purpose of purchasing a pernicious spirit, that must ever keep them poor*."

No. 7, p. 198. *February* 1799. — "*Notwithstanding the settlement had before it the serious prospect of wanting grain, and the consequent destruction of much useful stock*, it was known that several people had *erected stills* and provided materials for the purpose of distilling spirituous liquors — a pernicious practice, *which had long been forbidden by every officer who had had the direction of the colony*. Former orders on this subject were now repeated, and persons of all descriptions were called upon to use every means in their power, in aid of the civil magistrate, to seize and destroy such stills and materials as they might find.

No. 8, p. 203. *March* 1799. — Speaking of an act of homicide committed in self-defence by a sentinel soldier on the person of a drunken seaman — "This accident," continues the reporter, "*was the effect of intoxication; to which, a few days after, another victim was added*, in the person of a female, who was either the *wife or companion* of Simon Taylor, a man who had been considered as *one of the few industrious settlers* which the colony could boast of. They had both been drinking together to a great excess, and in that state they quarrelled, when the unhappy man, in a fit of madness and desperation, put an untimely end to her existence. He was immediately taken into custody, and reserved for trial.

"*To this pernicious practice of drinking to excess, more of the crimes which disgraced the colony, were to be ascribed, than to any other cause;* and more lives were lost through this than through any other circumstance; for the settlement had ever been free from epidemical or fatal diseases. How much, then, was the importation of spirits to be lamented! *How much was it to be regretted, that it had become the interest of any set of people to vend them!*" [It might have been added (as your Lordship will see) — and in one way or other, of *every* set of people without exception. As to its being *become*, so it always was from the first, and so it must be to the last.]

"*Several robberies*, which at this time had been committed, *were to be imputed to the same source*."

No. 9, p. 205. *April* 1799. — At this time a Spanish ship, having been taken by two whalers, was brought into Port Jackson; and the ship being condemned, part of her cargo was sold by auction. The cargo (our author informs us in a note) "consisted of sugar, flour, and an ardent spirit similar to the *aqua ardente* of the Brazils. This article," he adds, "the governor would *not* allow to be sold *by auction*."

Observations. — *Not by auction:* that the governor would not allow it to be sold *at all* is not said. — *Quere* 1. How much more intoxication would be produced by a gallon of spirits sold by auction, than by ditto of ditto sold by hand? — *Quere* 2. What advantage is gained by keeping down the price "of the source of all diseases and all crimes?"

No. 10, p. 222. *July* 1799.—An observation made at this time serves at once to show the prodigious intensity of two vicious and closely allied propensities — drunkenness and sloth: so mighty the latter, nothing less than the former was able to get the better of it. "Much" (says our historian) "might be expected from the exertions of 355 people; and the greatest advantage would have been derived from their labours, had they been less prone to dissipation and useless traffic — *a traffic which most of them entered into solely with a view to indulging themselves in their favourite propensity of drinking*."

No. 11, p. 274. 2*d December* 1799.—" In the evening . . . . the Plumier, a Spanish ship, anchored in the Cove. She was a prize to three whalers, who had taken her near Cape Corientes, on the coast of Peru. Her cargo consisted chiefly of bad spirits and wine, which, on her being condemned by the court of vice-admiralty as a lawful prize, were removed into the supply, and an order was given out, *strictly forbidding the landing of any spirits*, wine, or even malt liquor, *until a regular permit had been first obtained.* This restriction upon wine and malt liquor was occasioned by spirituous liquors having been landed under that description."

No. 12, p. 275. 16*th December.* — " The court of criminal judicature being assembled, two mates of [the ship] Walker were brought before it, and tried for using menaces to a person who had stopt their boat when attempting to land spirits without a permit; but as he had not any special authority for making the seizure, or detaining the boat, they were acquitted."

No. 13, p. 280. 11*th January* 1800. — " Arrived the Fhynne, a small snow from Bengal, under Danish colours, which had been chartered *by the officers* of the colony, civil and military*, through the means of an agent whom they had sent thither for that purpose. *She was freighted on their account* with many articles of which they were much in want; and as *more labour could be obtained for spirits* than for any other mode of payment, *an article so essential to the cultivation of their estates was not forgotten.*"†

No. 14, p. 291. 14*th April* 1800.—" The quantity of spirits at this time in the colony occasioned *much intoxication and consequent irregularity. The settlers at the river were so lost to their own interests as to neglect sowing of their grounds;*‡ a circumstance which, but for the timely interference of the governor, would have ended in their ruin. Immediately on hearing of their situation, *he forbade the sending any more spirits to that profligate corner of the colony,*‖ as well as the retailing what had already been sent thither, under pain of the offender's being *prosecuted* for such disobedience of his orders.§

* The governor? Was he too of the number? — If not, did she sail, or was she freighted or unloaded without his knowledge? — *What, then, Sir, do you mean to accuse all these gentlemen* * * * * ? — Not *them* — indeed, my Lord.

† *Dic quibus in terris* . . . . . Where is that colony, which, if it were not poisoned, would be starved? — For the consequence, see the next article.

‡ Drunk, they will not sow — not drunk, they will not reap — (No. 13.)

‖ A prohibition of this sort, if it could be made effectual in one place, why not in another? — if at one time, why not at another?

§ Quere, the penalty, and on what statute an offender would have been to be indicted?

No. 15, p. 299. *August* 9, 1800. — " Toward the latter end of the month, an attempt was made, at 3 o'clock in the afternoon, to land without a permit 1016 gallons of wine and spirits, which were seized at the wharf by the sentinel. If the person who made this attempt had been advised to so incautious and daring a proceeding, it could only have been with a view to try the integrity of the sentinels, or the vigilance of the police."

No. 16, p. 332. *August* 1801. —" Several ships had arrived from India, England, and America, most of which had brought upon speculation, cargoes consisting of *wine, spirits*, tobacco, teas, sugar, hardware, wearing apparel, &c. &c., the sale of *which was, with the governor's approbation, advertised by the commissary, and publicly sold* to all descriptions of people.

It appears that from these ships,

59,294 gallons of spirits 30,896 ditto of wines	had been imported.
26,974 gallons of spirits 8,896 ditto of wines	had been landed.*
And	
32,320 ditto of spirits 22,000 ditto of wines	had been sent away.†

Observations.—I have already intimated, my Lord, that I see nothing blameworthy in the conduct maintained in this respect by gentlemen in the colony; nothing which it is in the power of blame to set right; nothing, therefore, for which blame would be of any use. If by any sacrifices or exertions of his own, it would have been in the power of any of them to have subtracted anything considerable from the sum-total of the mischief, then, indeed, ground for blame might not have been altogether wanting—then, indeed, blame itself might not have been altogether without its use. But in that situation it does not appear to me, that from any such *single* exertions, any effectual benefit could have been derived: nor even from any such *joint* exertions as the nature of the case admitted of. *Manufacturing* and *importation* taken together; the exclusion of the means of drunkenness out of the improved colony, presents itself to my view, I must confess, as an achievement, now and for everlasting morally impossible.

In the first place, as to *manufacturing.* — The settlements are spreading themselves over the face of the country: spreading themselves wider and wider every day. It is what

* Landed; viz. with permissions, from which alone the quantity landed could thus have been ascertained.

† Sent away; *i. e.* ordered to be taken away. For the effect of such orders, see No. 3, where it is said, " if not permitted, it was generally got on shore clandestinely, and very few ships carried back *any* of what they had brought down.

gentlemen wish to see them do: it is matter of triumph that they do so. It is a mark of "*improvement*"—of that feature of improvement which has hitherto been accepted in lieu of every other. They are not only spread, but scattered: they are so already; they will be more and more so every day. Settlers will not take up inferior land on the mere recommendation of its vicinity to already settled land, when superior land is to be had within a certain distance. But the more extended and dispersed the lots of lands are, with their inhabitants, the more incapable they are of being kept under any given degree—under any sufficient degree—of inspection; of being kept under a degree of inspection sufficient for any purpose: and of all purposes for *this*. In respect to every purpose, the deficiency of the system of inspectors—of whatsoever professions, civil and military—under whatsoever titles—is, and in the nature of the case ever must be, a standing topic of complaint. For preventing the erections of stills, orders upon orders have all along been issued. [See No. 7, p. 232.] But the publication of each subsequent order is a pretty sufficient evidence of the inefficacy of all preceding ones.

Next, as to *importation*.—Is it in the nature of things that the coast all round—the coast of a country as large as Europe—should be kept sufficiently guarded for this purpose? Would the whole navy of England be sufficient to the task? Is there so much as a government cock-boat, the expense of which, especially on such a service, is not, and very justly, grudged?

When by accident—by shipwreck (as per No. 5)—a cargo of spirits had been landed on a neighbouring island, preventing the importation of them was found to be impracticable. Would not the difficulty have been at least as great, if *design*, instead of accident, had brought them there? The spot, though *comparatively near*, was *positively* a very *distant* one. In case of design, not any such distant one would be chosen—but whatever spot, in point of vicinity as well as every other circumstance, presented itself as best adapted for the purpose.

So far as to what depends on the situation and distribution of the land: next, as to the permanent interest and consequent natural disposition of its inhabitants. Whatever regulations can ever be made for the preventing the introduction of spirits into the colony—be it by manufacture, be it by importation—there is scarcely a human being in the colony, in or out of power, who has not a personal interest in the inefficacy of them—an interest as strong as it is possible for a man to have in the inefficacy of any such fiscal regulations.

Among the convicts themselves—non-expirees, as well as expirees—servants as well as masters—there is scarcely a man to whom this liquid poison is not dearer than life. Among all classes of persons—convicts—military officers—civil officers—not a master that, so long as any of it is to be had anywhere, or from anybody, can get a servant to work for him on any other terms. In one case, it is true, and that as conceivable a one as any other, this common interest would not exist. Such would be the case if not so much as a single master had so much as a single drop of the poison to give. In this case, their common corrupt interest would be wanting, and the opposite virtuous common interest—the interest which all masters have in the sobriety of their servants—would take its place. But if *one* gives spirits *all* must—or all must see their farms deserted, and their servants gone from theirs to that one. By extraordinary exertions, a reduction in the quantity habitually consumed in the colony might every now and then, I doubt not, be effected; but any such reduction can never be other than temporary: for so many masters as there are (officers as well as others) who see other masters in possession of a greater quantity than they themselves can lay hold of, so many are there who are partakers in this common corrupt interest. Upon the whole, therefore, so long as the quantity of spirits in the colony is short of the full quantity which the convicts altogether are disposed to drink, so long must the virtual auction—the universal *competition* among the purchasers of the article—continue. Those who, at any given period, have the advantage in this respect over their neighbours, will find themselves under the constant necessity of keeping up their stock of it; keeping it up against all competitors, for the purpose of keeping up this advantage; so that the common interest in question—the interest which men of all descriptions have in eluding all such restrictive regulations—is not merely a general and temporary interest, but a universal one, and, humanly speaking, an indefeasible and perpetual one.

With the situation of the governor of New South Wales and his subordinates, contrast, in this respect, that of the governor of a panopticon penitentiary house. Not a drop of forbidden liquor can be either drunk in the house, or so much as introduced into it, without being seen to be so by everybody: by officers—prisoners—visitors through curiosity—visitors upon business: therefore, were transgression ever so advantageous, detection and punishment would be inevitable. But what is still more, transgression would give no advantage. Without work, among those who can work, not so much as a morsel of bread is to be had by anybody (so that here, as elsewhere, as many as choose it may be starved;) and every person, the more he works the

better he is paid: the amount of his earnings is ascertained, and he receives a quarter of it. Taken in excess, fermented liquors would be directly adverse to profitable economy; taken even in moderation, they would be of no use to it.

X. *Per Contra*—PENITENTIARY SYSTEM,—*General Reformation, as attested in general expressions:*—1. *During Confinement.*

No. 1. Philadelphia; 1793: Lownes, p. 89. —"The order in their" [the prisoners'] "employments, their *demeanour* towards the *officers*, *harmony* amongst each other, and *their decorum and attention* at times appointed for *religious* worship, have been obvious, and are such as have obtained the approbation of all those who have been witnesses to it; and we trust that the impressions received in this secluded state of existence will have a happy influence towards promoting the great object contemplated by the change of the penal code by the legislature of this commonwealth."

No. 2. Philadelphia; 1795: Liancourt, p. 21.—"The appearance of the prisoners has nothing of that insolence or of that dejection which is so striking among our own convicts in Europe. It is cold, respectful, sorrowful, and calm."

No. 3. Philadelphia; 1796. Turnbull, p. 4. —"There was such a spirit of *industry* visible on every side, and such *contentment* pervaded the countenances of all, that it was with difficulty I divested myself of the idea that these men surely were not convicts, but accustomed to labour from their infancy."

No. 4. Ib. p. 27.—"The convicts are called to their meals by the ringing of a bell; we saw the men sit down to their supper, and I do not recollect a scene more interesting. At one view, we beheld about 90 fellow-creatures, formerly lost as it were to their country and the world, now collected in one body, and observing that air of *composure* and *decency to each other*, consequent only from a long and continued practice of moral habits."

No. 5. Ib. p. 46.—"After conversing with her (the *jailoress)* for some time, he (a person before mentioned) inquired of her whether there were no inconveniences attending the institution? With the greatest concern she replied, that there was one which gave her no small degree of uneasiness. That the *debtors* in their apartments, from being able to overlook the yard of the prison, made her fear that their conversing together, swearing, &c. might *corrupt* the *morals* of *her* people. You may think it strange that *debtors should corrupt criminals;* but the case is really so, for there is certainly as much, if not more, morality among the latter, than the former. And so fully convinced were the inspectors of her apprehensions being well founded, that, to remedy the defect, they have since had the prison wall raised."

Observations.—The sex of the keeper, compared with the nature of her office, brings to view the picture of a future golden age as delineated by prophetic poetry: "The wolf shall dwell with the lamb, * * * * and a *young child* shall lead them." The paradox had already received its explanation in the same page.

"I was surprised to find a female in the first appointment, and on inquiry found that her husband was formerly jailor. Discharging the duties of a tender parent towards his daughter, infected with the yellow fever in 1793, he caught the disorder and died, leaving the prisoners to regret the loss of a friend and protector, and the community that of a valuable citizen. In consideration of his faithful performance of the functions of his office, his widow was nominated to succeed him. She is exceedingly attentive and humane."

No. 6, Ib. p. 48.—"Few have been known to stay in the prison the whole of the term to which they were sentenced, the *amendment* and *repentance* of many of them being so visible to the inspectors, as to have had a claim to the governor's clemency."

2. *After Liberation, as per accounts.*

No. 7. Philadelphia; 1793: Lownes, p. 92. —"Out of near 200 persons, who at different times have been recommended to and *pardoned* by the governor, only four have been returned; three from Philadelphia, reconvicted of larceny, and one from a neighbouring county. As several of them thus discharged were old offenders, there was some reason to fear that they would not long behave as honest citizens. But if they have returned to their old courses, they have chosen to run the *risk* of being hanged in other states, rather than encounter the *certainty* of being confined in the penitentiary cells of this. We may therefore conclude, that the plan adopted has had a good effect on these; for it is a fact well known, that many of them were heretofore frequently at the bar of public justice, and had often received the punishment of their crimes under the former laws."

No. 8. Philadelphia; 1796: Turnbull, p. 48.—"Reconvictions are seldom heard of. Of all the convicts *condemned* for these five years past, not above 5 in a 100 have been known to return."

Observations.—Between this article and the last preceding one, your Lordship will have observed the difference. Those of whom but 2 in the 100 proved *backsliders*, were picked men: men picked out as the best, and *pardoned.* Those of whom so many as 5 in the 100 proved backsliders, were the whole number of the "*condemned*" taken together. The *time* which gave these

gave these 5 in a 100, was moreover nearly as long again as the time which gave not quite so much as the 2 in the 100.

No. 9. New York; 1802: Eddy, p. 33.—"Under the instruction of a prisoner sentenced for life, who was a skilful shoemaker, it was matter of surprise to observe with how much *rapidity* those who were before wholly ignorant of the trade, learned to become *excellent workmen.*"

No. 10. Ib. p. 52.—"It is with no small pleasure that the inspectors have observed, that a number of those who have been discharged from the prison, confided to their care, have continued in habits of industry and sobriety, and bid fair to become good members of society."

Observations.—From a literal interpretation of this passage, an inference that might be drawn is, that though the reformed were in a certain number, the unreformed were in a number still greater. But from the general tenor of the publication, and in particular from the two next articles of it as here copied, it will appear evident enough, that the persons here alluded to as reformed were such alone as on that account happened in a particular manner to have attracted the notice of these their former guardians."

No. 11. Ib. p. 85.—In five years ending with 1801, "of 349 prisoners who have been discharged by expiration of sentence and pardon, 29 only, or 1-12th part, have been convicted of second offences; and of these, 16 were foreigners. Of 86 pardoned, 8 have been recommitted for second offences; and of these, 5 were foreigners."

In the recent institution at New York, your Lordship will have observed, the account of backsliders is not as yet quite so favourable as in Philadelphia. The difference may, it should seem, fairly enough be ascribed to a variety of peculiar difficulties which New York has had to struggle with.—Statement given by Mr. Eddy, too long to be inserted here.

In respect of general remarks, circumstances would naturally give a different colour to the representations as between Philadelphia and New York. The *Philadelphia* accounts are, the two latest of them, accounts given by strangers to strangers: the *New York*, by the leading manager to his fellow-countrymen and fellow-townsmen. In this latter case, the main object was to give economical and other arithmetical details: it is a *compte rendu* by a trustee to his principals. As to deportment, &c. of the prisoners, the persons to whom principally the writer was addressing himself were fellow-townsmen, who being on the spot, had eyes of their own to see with. That upon the whole, the chief author saw nothing to deter him from expressing himself satisfied with his work, appears from the concluding paragraph, which is as follows:—

No. 12. Ib. p. 70.—"The New York state-prison will furnish a model for others, which the increase of population and growth of luxury may render necessary in the distant parts of this extensive country*. And whatever may be the future condition of mankind, this institution will reflect lasting honour on the State; become a durable monument of the wisdom, justice, and humanity of its legislators, more glorious than the most splendid achievements of conquerors or kings; and be remembered, when the magnificent structures of folly and pride, with their founders, are alike exterminated and forgotten.

Penitentiary System continued:—*Reformation—Particular Exemplifications:—Heroic Humanity.*

No. 1. Philadelphia; 1796: Turnbull, p. 91.—"At the time of the yellow fever in 1793, great difficulty was found in obtaining nurses and attendants for the sick at Bush Hill hospital. Recourse was had to the prison. The request was made, and the apparent danger stated to the convicts. As many offered as were wanted. They continued faithful till the dreadful scene was closed—none of them making a demand for their services till all were discharged.

No. 2. Ib. p. 48.—"Some (on the same occasion) *at the expiration of their terms of confinement*, voluntarily offered themselves . . . . and conducted themselves with so much fidelity and tenderness, as to have had the repeated thanks of the managers."

No. 3. Ib. p. 92.—Another instance of the good conduct of the prisoners during the sickness, happened among the *women*. When request was made of them to give up their *bedsteads* for the use of the sick at the hospital, they *cheerfully offered* even their *bedding*, &c. When a similar request was made to the *debtors*, they *all* refused." Some difference, my Lord, between these women and the women "far worse than the men," in New South Wales—some difference between the men who serve in hospitals at the peril of their lives, and those who make bonfires of hospitals, as well as of prisons with the prisoners in them:—the prisoners—their comrades—their peers—men whom, instead of burning them, they would have been ready to clasp to their bosoms, so it had been to join in mischief.

XI. Main Cause:—*Sobriety, Strictness,—Universality and good effects of it in the Penitentiary House.*

No. 1. Philadelphia; 1795: Liancourt, p. 19.—"They [the convict prisoners] are ne-

* "Similar prisons are *already* established in *New Jersey* and *Virginia*, and others are *proposed* to be erected in Massachusetts and South Carolina."

ver on any account permitted the use of fermented liquors, not even of small beer. The prohibition of fermented drink is a standing order, and *most religiously observed.* The liveliness and animation which such liquors might induce in the workmen is only an artificial and momentary vigour; a cause of irritation, heating the blood, and destroying the effect of that temperate regimen which is intended to alter the habit and the constitution."

No. 2. Philadelphia; 1796: Turnbull, p. 26.—" The drink of the criminals is molasses and water; spirituous liquors are forbidden, except for medical purposes prescribed by the attending physician; and the person who sells, or suffers them to be introduced on any other occasion, subjects himself to a penalty of five pounds; if an officer of the prison, to dismission from office. The reason of this rigorous regulation arises, in the first place, from the probability of the abuse which might be made of the practice, were it once introduced: and in the next place, from the conviction of the inspectors, that those liquors act not so powerfully in strengthening a body doomed to more than ordinary toil and labour, as the effects of good wholesome water. That whatever cheerfulness or vigour it may produce in a labourer, it is merely temporary, and like all high stimulatives, its operations are no sooner at an end, than the system is left enervated and fatigued."

No. 3. New York; 1802: Eddy, p. 49.—" *Many* of those who came into the prison *with constitutions greatly impaired* by excessive drinking, debauchery, and vicious habits, after being sometime used to the system of temperance, order, and industry established in the prison, *have become healthy and vigorous.*"

No. 4. Ib. p. 59.—" It is well known that the greater number of crimes originate in the irregular and vicious habits produced by intoxication, and by the idle, low, and dissipated practices encouraged in taverns and tippling-houses. *There are few criminals whose gradual depravation cannot be traced to this source.*"

No. 5. Ib. 59, 60.—" By the city charter, the power of granting licenses is vested in the mayor, who is the sole judge of the propriety of granting them, or of their number. *Thirty shillings* are paid *for each license*, four-fifths of which sum goes into the city treasury, *and the residue to the mayor.* While a revenue is derived to the corporation from these licenses, it is not to be expected that there will be much solicitude to lessen their number, or to examine minutely into the merits of the applicants for them."

Observations. — Can the degree of such solicitude be expected to be much greater where, instead of now and then an odd 5s. to be gained by putting about the cup of intoxication, the greater part or the whole of a man's income—of the income of every man who could do anything towards stopping it, depends upon the circulation of it?

No. 6. Philadelphia; 1799: Liancourt, p. 22.—" The new regimen has . . . . produced a change which is remarkably evident, even in the physician's bill, which formerly amounted to two hundred or three hundred and twenty dollars per quarter, but at present seldom rises above forty. This enormous difference is entirely attributable to the total change of discipline which has taken place. During the former system, the irregular government of the prison was attended with filth and drunkenness; and frequent broils produced diseases, wounds, and bruises of every kind. Under the new order, these causes of evil have ceased — the disorders are confined to colds, or such accidents as are common everywhere. Only two prisoners have deceased within four years, and those of the small pox. Except in cases of contagious maladies, the sick prisoners remain in their room: in such cases, however, they are removed to a separate apartment."

No. 7. Philadelphia; 1796: Turnbull, p. 20. —"A good proof of the cleanliness of the place you have, when I mention from authority, that out of 8060 persons who were confined in the several apartments of the prinso (the debtors' jail included,) from the 28th day of September 1780 to the 5th of the same month in 1790, only twelve died of natural deaths. Since the latter of these periods, the establishment of the new system of discipline has produced much better arrangements, as well in respect to the comfort and health as to the good order and government of the prisoners. This has been evident in several instances. The physician's bill, which formerly amounted to 1280 dollars a-year, seldom exceeds at present 160; and excepting in cases of contagious diseases, not more than two prisoners have died from June 1791 to March 1795, a period of nearly four years. During the fall of 1793, when the yellow fever had extended its fatal ravages over every part of the city and suburbs of Philadelphia, we have from Mr. Carey, in his account of that calamity, that only six persons in the prison were taken sick and sent to the hospital, although the situation of jails, even under the best administration, makes them most frequently liable to the generation of contagious and other diseases. At this time, too, were confined there, by order of the French consul, 106 French soldiers and sailors, besides 100 other prisoners, composed of convicts, vagrants, and criminals committed for trial."

Observations. — From the number of the prisoners that passed through the prison within a given space of time — from the mere number alone, as compared with the number

of deaths within that time, no very precise induction can be drawn: another point to be known is, what was the average duration of a prisoner's continuance there; if, for example, about half-a-year, viz. 180 days, this would give for the 8000 in ten years, four hundred throughout the whole of every year: upon this number, 12 in the ten years would be 1⅕ death per annum upon the four hundred.

In this parallel between the two systems, your Lordship may have observed, on the part of the penitentiary system, whole heads wanting, and those very material ones. Under the head of miscellaneous crimes (given as exemplifications of depravity,) a mere blank: under the head of *incendiarism* in particular, a complete one. The case is—that among chronical punishments administering a coercive discipline, it is the peculiar glory of the penal colonization plan, that under it the list of crimes keeps running on, as if no coercion at all were administered; or, if there be any difference, in rather a greater proportion under and with the benefit of this discipline, than without it. In this point, I question whether the world ever saw anything under the name of *punishment* bearing the least resemblance to it. In the very worst ordered gaol, the discipline has at any rate been sufficient to keep the prisoners out of the commission of great crimes: even the hulks have succeeded thus far; even the worst ordered of those archetypes of our hulks that are still to be seen upon the continent—the *galleys*. No forcible robberies are committed—no burglaries—no churches, no hospitals are burnt—even in the galleys.

XII. Central Inspection Principle:

Escapes, for want of it, from the American Prisons, as above.

In a method governed by the consideration of the *ends* of penal justice, the topic of escapes seems to belong to the head of *Incapacitation*—incapacitation for fresh offences. Why? Because under any mode of confinement the effect of which is to prevent offences while it lasts, the effect of an escape is to break the bridle, and leave delinquency to run on again in its old course. Unfortunately, in the penal colony of New South Wales, the place for the topic of *escapes* is not quite so easy to be found. When a man escapes out of it, the scene indeed of his misdeeds is changed; but the multitude of them, being during the continuance of the confinement at the highest pitch, is not in much danger of being increased by the cessation of it. Be this as it may, the confinement of the prisoner being by the supposition a *desirable* object, an escape by which he is liberated from that confinement must, happen where it will—must, were it only for consistency's sake, be ranked among *undesirable* ones. In the case of any other place of legal confinement—in the case of an American penitentiary-house more particularly—this character will be seen to belong to it without dispute.

Good as the penitentiary system has proved itself, wherever it has been established—good in every point of view—good with reference to its *end*—good in *comparison*, with reference to every other system of confinement—I have never given it as altogether perfect: I mean, in any of its existing shapes. I have reserved to myself the submitting to your Lordship, whether from experience as well as by reason, the addition of the *principle of central inspection* may not be regarded as calculated to add to the perfections of it. *Reformation*, *economy*, and *prevention of escapes*—*incapacitation* thereby for fresh offences resulting from escapes—in respect of every one of these objects, I have ventured to state it as eminently serviceable. In respect of *reformation* and *economy*, its presence having never been experienced, the loss, if any, from the want of it, is a point of which, as even the *existence*, however probable, cannot, strictly speaking, be demonstrated, still less can the *amount* be mathematically ascertained. In the article of *escapes*, the amount of the inconvenience from the want of it, and thence of the benefit that would result from the adoption of it, is rather more open to demonstration. A *postulate*, it is true, must even in this case be assumed: viz. that *under the eye of a keeper*, with adequate assistance and means of defence at his elbow, he at the same out of the reach of assault, neither a single unarmed prisoner, nor any number of unarmed prisoners, confined in a room by bars and bolts, will so much as attempt to escape out of it. This being admitted, whatever escapes have been found actually to have taken place from a prison unprovided with this security, may be set down as having the want of it for their cause: and to this same score may be set down, in the account of *economy*, the expense of all such *guards* whose services, in a spot exterior to the prison, have for a given period been kept appropriated to this purpose. After these remarks, whatever considerations are presented to view by the ensuing extracts will, I presume, find their application without much difficulty.

XIII. Inspection *the more perfect — the more perfect the Management; viz. in respect of* Reformation, Incapacitation *as to* Escapes, *and* Economy.

No. 1. Philadelphia; between 1786 and April 1790, under the *ambulatory jail-gang system*, being the first attempt at reformation. Liancourt; 1795: p. 6.—"Criminals loaded with irons, and scattered through the streets and along the roads, presented to the

public the spectacle of vice, rather than of shame and misery; and the impossibility of watching them properly, facilitated the means of excess, of drunkenness, of pillage, and of *escape.*"

Observations.—Under this system, it may be inferred that escapes actually did take place, with more or less frequency, as under such a system might naturally be expected.

No. 2. Philadelphia; 1786: Turnbull; 1796, p. 14.—"Finding at length that the perseverance of the 'Society for alleviating the miseries of Prisons' bid fair to an extinction of all hopes of their continuing in the same scene of confusion, with one consent they resolved on a *breach of prison.* The attempt was accordingly made on the evening of the day the new order of things had taken place. Fortunately, *few of them escaped:* [Fifteen, as per Liancourt, p. 31.] The jailor was immediately discharged; and since that period [to August 1796,] *almost every project* for the same purpose has failed, either from the want of unanimity of the most evil disposed, the fears of those less so, or the decided disapprobation of the greatest proportion of the prisoners to anything of the kind."

No. 3. Ib. Philadelphia; 1796: Turnbull, p. 19.—"About seven [prisoners] are in a shop, one of whom is appointed by the jailor, whose duty it is strictly to notice all offences, and who, in default of it, is punished according to the rules. For this, however, there is little or no necessity, *as they commonly work under the mutual inspection of each other.** *The keepers constantly parade among the prisoners, in the court-yards and passages.* [viz. per Liancourt, p. 19. Turnkeys, four in number for the whole house.]

Observations—"*Constantly parade among the prisoners;*" *i. e.* constantly have some of the *prisoners themselves in view:*—"*constantly in the yards and passages;*" *i. e.* constantly have in view *more or less* of the *space* occupied by the prisoners:—constantly; *i. e.* in the day time? But in the night? have they them, *all of them*, and *all night* long, in view? Unquestionably not; if they had, the escapes indicated by the word *almost*, in No. 1, could not, humanly speaking, have taken place.

So far at least as mere inspection is concerned, the work of the *four* keepers would, in a prison upon the central inspection principle, have been performed, and much more effectually and clear of *almosts*, by a single keeper; at the same time that, on my plan, the *economy* of the concern would of itself have afforded, as well as demanded, all night long, the assistance of a number of observing eyes.

No. 4. New York; 1802: Eddy, p. 18.—"*Absolute reliance ought not to be placed on the strength of any prison, let their walls be ever so well constructed. Nothing will probably prevent escape but the unremitting vigilance of the keepers, and a strict watch day and night.*"

No. 5. Ib. p. 19.—"*It would have been more secure, if all the cells and the rooms in the wings adjoining had communicated with one and the same passage; since the same person who watched the wings might at the same time have attended to the cells. It was probably owing to this defect that the escapes were made from the cells, which might have been prevented by a suitable watch.*"

No. 6. Ib. p. 37.—"When day-light disappears, a small lamp is lighted in each room and in the halls; and then the assistant keepers go on watch in the halls and corridors, which command a view through grated doors of each apartment: they walk to and fro during the night, dividing the watch between them."

No. 7. Ib. p. 29.—"*In consequence of some escapes*, the legislature, at the last sessions, authorised the governor, or the person administering the government, to raise a *guard*, to be called 'The State Prison Guard.'

"The *annual expense* of this guard will be about 7000 *dollars* (£1575.) Though the security of the prison is of the highest consequence, since the efficacy of mild punishments depends on their certainty; yet it is probable that an *increase of the number of keepers* [*i. e.* within the prison] *and a more perfect arrangement of them, would have been equally effectual* to that security, and would create not half the additional expense of the present guard."

Observations.—A more perfect arrangement of the apartment, viz. upon the *central inspection* principle, would have been much more effectual, and saved the expense not only of the guard itself, but of the proposed succedaneum to it.

No. 8. Ib. p. 54.—"*About twenty-two of the most obdurate* criminals are kept confined and at work in the separate apartments, and are not suffered to come out, or to have any communication with other prisoners, but *are constantly watched by keepers day and night.*"

Observations.—Without the benefit of the central inspection principle, by which the whole inhabitancy would have been watched by a single keeper without effort, how severe the obligation of such vigilancy, how inordinate the expense!

That these precautions were neither unnecessary, nor so much as sufficient, appears but too plainly from the account of *escapes*, as given by the same intelligent and zealous administrator, whose labours had, under the invincible disadvantage of ill-adapted architecture, been applied to the prevention of them.

* The prisoners under the inspection of each other!—A pretty check that would be in New South Wales!

TABLE,

Abstracted from Eddy's Account of the *Penitentiary-House* in New York, p. 79; showing (as far as is there exhibited) the Numbers of Prisoners received into the said Prison, and discharged from thence — by *Death*, *Escape*, *Pardon*, and *Expiration* of Sentence — in five years ending 1801: together with the Number *remaining* in Prison at the end of the year last mentioned.

Years.	Received.	Discharged by Death.	Escape.	Pardon.	Expiration.	Remaining, 31st Dec.
1797	121	1	1	—	—	—
1798	144	6	3	—	—	—
1799	121	9	7	—	—	—
1800	150	8	6	—	—	—
1801	157	4	8	—	—	344
Totals	693	28	25	86	210	344

From this it appears, that in the case of that prison, the number of the prisoners that have *escaped* has, within the five years in question, been almost *equal* to the number who have *died* in it; between 1-3d and 1-4th of the number who have been discharged out of it by *pardon;* between 1-8th and 1-9th of the number discharged by *expiration* of their sentences; and between 1-27th and 1-28th of the whole number *received* into it.

If a man may be allowed to quote himself, a few observations written on the same subject on another occasion* will not here be altogether out of their place. "If in a building on this plan, anything of disorder is supposed, it must be because, though in words the adoption of it may have been admitted, the state of things that would be the necessary result of it is not present to the mind. The disorder supposed, is supposed to be out of sight; which in fact it never could be. From the want of this advantage proceeds that anxiety, the intensity, and at the same time the inefficacy of which is apparent in every page of the *rules and orders* that one sees. *Officers* frequently *to go into the wards* — frequently *to hear complaints* — *master* frequently *to go into every ward, and inspect the persons therein, on a particular day of the week especially* — twice *a-week the matron to inspect every part of the house* — *paupers to be kept clean* — *officers* frequently *to take a view of them* — *paupers to come down into the dining-hall to be mustered and employed* — *doors to be locked that they may not harbour in the wards in the day time;* — *nurse-children* frequently *to be visited* — *once a-month at least;* — *apprentices* frequently *to be visited by the messenger.* — This from the regulations of one of the first-rate poor-houses. All this an attempt — and that probably in a great degree an unavailing one — to effect by great exertions, not a hundredth part of what on the central inspection plan would take place of itself, without a man's stirring from his chair."

Being thus far engaged in self-piracy, I will e'en beg leave of your Lordship to go so much further as to transcribe a passage on the same subject from another work: I mean the book entitled *Panopticon;* containing an exposition of the *central-inspection* principle, with a view to the variety of different purposes to which it presented itself as applicable. The insertion may perhaps be the more pardonable, inasmuch as though the first of the three little volumes, of which the work consists, was in 1791 reprinted, and perhaps sold in Ireland, by order of the government of that day, yet neither that partial re-impression, any more than the original impression, can have *ever* found its way *here* into the shops. At the same time, not to obtrude as necessary, what may perhaps be deemed superfluous, it stands dismissed to the bottom of the page.*

* Papers intituled, *Pauper Management Improved;* first printed in *Young's Annals*, anno 1797 and 1798.

* A collateral advantage, and on the score of frugality a very material one, is that which respects the *number* of the inspectors requisite. If this plan required more than another, the additional number would form an objection which, were the difference to a certain degree considerable, might rise so high as to be conclusive: so far from it, a greater multitude than ever were yet lodged in one house, might be inspected by a single person. For the trouble of inspection is diminished in no less proportion than the strictness of inspection is increased.

Another very important advantage, whatever purposes the plan may be applied to, particularly where it is applied to the severest and most coercive purposes, is, that the *under*-keepers or inspectors, the servants and subordinates of every kind, will be under the same irresistible control with respect to the *head* keeper or inspector, as the prisoners or other persons to be governed are with respect to *them.* On the common plans, what means, what possibility, has the prisoner of appealing to the humanity of the principal for redress against the neglect or oppression of subordinates, in that rigid sphere, but the *few* op-

What is below being read or not read, let me beg of your Lordship to consider whether, if the too famous prison in *Coldbath Fields* had been upon any such plan, those com-

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portunities which, in a crowded prison, the most conscientious keeper *can* afford—but the none at all which many a keeper *thinks* fit to give them? How different would their lot be upon this plan!

In no instance could his subordinates either perform or depart from their duty, but he must know the time and degree and manner of their doing so. It presents an answer, and that a satisfactory one, to one of the most puzzling of political questions, *Quis custodiet ipsos custodes?* and as the fulfilling of his as well as their duty would be rendered so much easier than it can ever have been hitherto, so might and so should any departure from it be punished with the more inflexible severity. It is this circumstance that renders the influence of this plan not less beneficial to what is called *liberty*, than to necessary coercion; not less powerful as a controul upon subordinate power, than as a curb to delinquency; as a shield to innocence, than as a scourge to guilt. Another advantage, still operating to the same ends, is the great load of trouble and disgust which it takes off the shoulders of those occasional inspectors of a higher order, such as *judges* and other *magistrates*, who, called down to this irksome task from the superior ranks of life, cannot but feel a proportionable repugnance to the discharge of it. Think how it is with them upon the present plans, and how it still must be upon the best plans that have been hitherto devised! The cells or apartments, however constructed, must, if there be 900 of them, (as there were to have been upon the penitentiary-house plan) be opened to the visitors one by one. To do their business to any purpose, they must approach near to, and come almost in contact with, each inhabitant, whose situation being watched over according to no other than the loose methods of inspection at present practicable, will on that account require the more minute and troublesome investigation on the part of these occasional superintendents. By this new plan, the disgust is entirely removed, and the trouble of going into such a room as the lodge is no more than the trouble of going into any other.

Were Newgate upon this plan, all Newgate might be inspected by a quarter of an hour's visit to Mr. Ackerman.

Among the other causes of that reluctance, none at present so forcible, none so unhappily well grounded, none which affords so natural an excuse, nor so strong a reason against accepting of any excuse, as the danger of *infection:* a circumstance which carries death, in one of its most tremendous forms, from the seat of guilt to the seat of justice, involving in one common catastrophe the violator and the upholder of the laws. But in a spot so constructed, and under a course of discipline so insured, how should infection ever arise? or how should it continue? Against every danger of this kind, what private house of the poor—one might almost say, or even of the most opulent—can be equally secure?

Nor is the disagreeableness of the task of superintendence diminished by this plan in a much greater degree than the efficacy of it is increased. On all others, be the superintendent's visit ever so unexpected, and his motions ever so quick, time there must always be for preparations, blinding the real state of things. Out of nine hundred cells, he can visit but one at a time; and, in the meanwhile, the worst of the others may be arranged, and the inhabitants threatened and tutored how to receive him. On this plan, no sooner is the superintendent announced, than the whole scene opens instantaneously to his view.

In mentioning inspectors and superintendents who are such by office, I must not overlook that system of inspection, which, however little heeded, will not be the less useful and efficacious: I mean the part which individuals may be disposed to take in the business, without intending perhaps, or even without thinking of, any other effects of their visits, than the gratification of their own particular curiosity. What the inspector's or keeper's family are with respect to *him*, that and more will these spontaneous visitors be to the superintendent: assistants, deputies in so far as he is faithful, witnesses and judges should he ever be unfaithful to his trust. So as they are but there, what the motives were that drew them thither, is perfectly immaterial: whether the relieving their anxieties by the affecting prospects of their respective friends and relatives thus detained in durance, or merely the satisfying that general curiosity, which an establishment on various accounts so interesting to human feelings, may naturally be expected to excite.

You see I take for granted as a matter of course, that under the necessary regulations for preventing interruption and disturbance, the doors of these establishments will be, as, without very special reasons to the contrary, the doors of all public establishments ought to be, thrown wide open to the body of the curious at large:—the *great open committee* of the tribunal of the world. And who ever objects to such publicity where it is practicable, but those whose motives for objection, afford the strongest reasons for it?

Decomposing the plan, I will now take the liberty of offering a few separate considerations, applicable to the different purposes to which it appears capable of being applied.

A penitentiary-house more particularly is (I am sorry I must correct myself, and say was to have been) what every prison might, and in some degree at least ought to be, designed at once as a place of *safe custody* and a place of *labour*. Every such place must necessarily be, whether designed or not, an *hospital:* a place where sickness will be found at least, whether provision be or be not made for its relief. I will consider this plan in its application to these three distinguishable purposes.

Against *escapes*, and in particular on the part of felons of every description, as well before as after conviction—persons from the desperateness of whose situation attempts to escape are more particularly to be apprehended, it would afford, as I dare say you see already, a degree of security, which perhaps has been scarcely hitherto reached by conception, much less by practice. Overpowering the guard requires an union of hands, and a concert among minds. But what union, or what concert, can there be among persons, no one of whom will have set eyes on any other from the first moment of his entrance? Undermining walls, forcing iron bars, requires commonly a concert, always a length of time exempt from interruption. But who would think of be-

plaints which have given so much trouble to so many Right Honourable and Honourable Gentlemen could ever have obtruded themselves? — whether the ground for those complaints, such as it was, could ever have had existence? — whether the time of so many public men, whose labour, so much to their regret, was for so many weeks employed upon this irksome service (men worthy of better occupations,) would not have been saved, and the peace of the metropolitan county, together with the situation of its veteran representative, have remained undisturbed?

At different times a sketch on the central-inspection plan has been shewn to jailors:— at no time without producing an exclamation: *Ah! if my jail were like this, my task would be a safe and easy one!*

Different men, different opinions: where is the subject, my Lord, that will not display the difference, especially when motives prompt opinions, and situations convert them into laws?

One man, upon being told of a prison, in which every prisoner was without intermission exposed to an inspecting eye.—"Then they'll all get out," says he. This was one of those men, whom, under the *ancien regime*, gentlemen used to send out to govern kingdoms: accordingly, so long as he reigned, he took effectual care there should be no such jail to get out of in his dominions, spite of everything that could be said to him by subordinates.

Another man, upon seeing the model of a prison round like *Ranelagh*, with this difference, that excepting iron bars and supports as in work-shops, the circumference was all glass, exclaimed immediately — "This prison will be too dark: the keepers in the middle will never be able to see their prisoners." The room it was in, being none of the lightest, ocular demonstration was so far on his side. By I know not by what accident, this *reason* missed being added to the *four reasons for relinquishment:* though, sure enough, there was a time, my Lord, when they lay all together safe and snug in the same place. Alas! my Lord! why were they ever suffered *to get out of it?* *There*, there indeed, *was* an *escape!*

Behold here again, my Lord, another governor of kingdoms: a task a man seems to be set down to, when he is fit for nothing else. Alas! my Lord! what a truism was the deathbed observation of Chancellor *Oxenstiern* to his son: *Nescis, mi fili, quam parvâ sapientiâ mundus regitur!**

XV. *Fruit of the Penitentiary System, in point of Example as well as Reformation. Decrease of Crimes.*

No. 1. Philadelphia; 1793: Lownes, p. 93. —"Our *streets* now meet with no interruption from those characters that formerly rendered it dangerous to walk out of an evening. Our *roads* in the vicinity of the city, so con-

ginning a work of hours and days without any tolerable prospect of making so much as the first motion towards it unobserved? Such attempts have been seldom made without the assistance of implements introduced by accomplices from without. But who would expose themselves even to the slightest punishment, or even to the mortification of the disappointment, without so much as a tolerable chance of escaping instantaneous detection? — who would think of bringing in before the keeper's face so much as a small file, or a phial of aquafortis, to a person not prepared to receive any such thing, nor in a condition to make use of it? Upon all plans hitherto pursued, the thickest walls have been found occasionally unavailing: upon this plan, the thinnest would be sufficient; a circumstance which must operate, in a striking degree, towards a diminution of the expense.

In this, as in every other application of the plan, you will find its lenient, not less conspicuous than its coercive tendency; insomuch that if you were to be asked, who had most cause to wish for its adoption, you might find yourself at some loss to determine between the malefactors themselves, and those for whose sake they are consigned to punishment.

* While correcting the press, an incident occurs, from which it should seem that American prisons are not the only places of confinement from which, when correcting eyes are wanting, or off their station, or opposed by walls, a man may find means to make his escape.

Times, December 15, 1802. —"J. Murphy, a convict, who made his escape from the Captivity hulk on Wednesday se'nnight, was taken near Fareham, and lodged in the Bridewell at Gosport. He made his escape from that prison on Wednesday last, by scaling the walls, and got clear off. This is the *fourth* time he has contrived to get out of confinement since he was sentenced to transportation; once from Newgate, from the hulk at Woolwich, from the Captivity at Portsmouth, and from the gaol as above.

Query 1st. How many times in the same period would this ingenious person have effected his escape from a prison on the panopticon plan, out of an apartment exposed night and day to the view of several pairs of eyes, themselves unseen by him, and commanding the whole circle without so much as a change of place?

Query 2d. What obstacle, if any, did noble lords expect would be opposed to any such ingenuity in these four places of confinement, together with the rest of them, 250 or so, throughout England, by the gentleman who, confining his inspection to the hulks, takes four peeps at them in a year, at £87 a peep?

Query 3d. Was it lest noble eyes should be suspected of being constantly asleep, that subordinate eyes were commissioned to be periodically awake?

Query 4th. When, for the single purpose of this *nominal* inspection, Parliament was called upon for a fresh act [42 Geo. III. c. 28, 24*th March* 1802,] might it not have been as well, if some show of obedience had been paid to the two already existing acts, of which, if obeyed, *real* inspection would have been the fruit?

stantly infested with robbers, are seldom disturbed by those dangerous characters. The few instances that have occurred of the latter, last fall were soon stopped. The perpetrators proved to be *strangers* quartered near the city, on their way to the westward.

"Our *houses, stores, and vessels*, so perpetually disturbed and robbed, no longer experience those alarming evils. *We lie down in peace — we sleep in security.*

"There have been but *two* instances of *burglaries* in this city and county for near *two* years. *Pickpockets*, formerly such pests to society, *are now unknown*. Not one instance has occurred of a person being convicted of this offence for two years past. The number of persons convicted at the several courts has constantly decreased. Thirty and upwards at a session have frequently been added to the criminal list: at this time, when both city and county courts are but a few days distant, there are but *five for trial!* Such have been our measures — such is the state of things — and such the effect. *If any one can assign other causes for them than are here adduced*, they must have other opportunities, other means of information than I am acquainted with."

No. 2. Philadelphia; 1796: Turnbull, p. 91. — "It appears that since the late improvements in the penal code, offences have diminished in a proportion of about one half; and when we recollect that the first table contains the offences of the city and county of Philadelphia only, we may pronounce that they have decreased throughout the whole state nearly *two thirds*. The two periods are equal, and the latter commences from 1791, from the new discipline not having taken place previous to that time. *The most material point gained* with respect to offences, *is the diminution of the most heinous ones*, which are still in a greater proportion. They stand in the table as follows: —

	Under the Old System—in the City & County.	Under the New System—in the whole State.
Burglary,	77	16
Robbery,	39	5
Murder,	9	0
Arson,	0	1
Rape,	0	1
Bigamy,	1	1
Total,	126	24

Observations. — This is a success indeed! a success reported at first after a trial of about two years: confirmed afterwards, as per last accounts, by a further experience of between three and four years. According to the figures, the first-rate crimes reduced to less than a *fifth* of their former number: but even this degree of success, prodigious as it is, falls short of the proportion really obtained. The larger number (the 126) during the prior period is for the capital — Philadelphia — *city and county* alone: — the smaller number (the 24) during the subsequent period — the period of improvement — is for all Pennsylvania — for the whole *state*. But in the jail of this same state, in December 1792,* at a time when, for the whole state, the number of convicts of all sorts was 37, out of these 37, the number for the city and county taken together was but 24; that is, was not quite so much as two thirds of the number for the whole state. Assuming, for supposition's sake, that at the point of time in question (August 25, 1796,) the proportion was still the same, it would follow, that at this latter point of time, out of the 24 for the whole state, no more than 16 were for the city and county: — in this latter period of five years, no more than 16 from the same portion of territory, which in the earlier period of the same length, had furnished convicts of the same description, to the number of 126. If instead of the 126, the number had been 128, the proportion of convicts for the latter period would have been no more than one-eighth of the number for the former — instead of four fifths, the decrease would have amounted to seven eighths.

Permit me on this occasion to add, my Lord, that the difference thus produced — the distinction thus noted — between the number of first-rate crimes and the number of crimes of a less mischievous complexion, is matter of particular satisfaction to me. It gives the *permit* of *experience* to some *speculative* and therefore contraband ideas, consigned long ago to some of the useless papers I have already hinted at. After the diminishing the number of crimes of all sorts and sizes taken together, another distinguishable though concomitant object should be (so it appeared to me,) by a system of due proportions as between punishments and offences, to shove down, as it were, the number of the higher crimes, to convert the higher ones as far as can be done into inferior ones — which inferior ones will then be found such to the mischief of which it is in the power of money

* 3*d December* 1792. Bradford and Lownes, p. 108. — Report of Inspectors of the Prison. By the same report, under the influence of the former system, no more than about one year and a half before, viz. 3d of May 1791, the number was as high as 143.

In 1791, according to the *census* for the United States, the population of the city and county was about one eighth of that of the whole state (as 54,391 to 434,373:) the number of the criminals in the rest of the state being but 13, when tha of the city and county was 24, this gives tne degree of criminality, in the *country* situation no more than about one sixth of ditto in the *town* ditto.

to apply a cure. This done, the mischief might, with the help of a few obvious and necessary precautions, be brought within the healing influence of the principle of *insurance:* the principle applied with so much success to the reducing the quantum of suffering from various other causes. Under the head of *Compensation*, I have already troubled your Lordship with a reference to the humble endeavours I had used to throw my mite into this treasury. What I do *not* pretend to say is—that against mischief from *criminality*, any more than against mischief from *fire* or *water*, the door could be altogether shut by this means or any other: but what I fear not to say is—that by this means the mischief from *criminality*—from such crimes as are committed (not to speak of defalcations that might be made from the mass of mischief, by defalcations from the *absolute* number of crimes,) might be made to undergo a degree of reduction, beyond anything which in this country at least has ever yet been looked up to as within the reach of hope. The great point is, to clear the country of those crimes, each instance of which is sufficient to awaken and keep alive, in every breast within a certain circle, the fear of boundless injury to person or property, as well as of destruction to life itself—in comparison of this wide-spreading—this almost universally extending mischief—this fear of boundless injury—the sum of the mischiefs resulting in each instance from losses and other injuries actually sustained by particular individuals would be found relatively inconsiderable. From the number of these superlatively terrific crimes, seven eighths or thereabouts appear, in the instance in question, to have actually been struck off in actual experience. In *this*, or any other country, my Lord, would not the same advantage have been worth purchasing at the same price?

In speaking of the *price*, it would be incorrect, I doubt, to state it as consisting of such exertions, merely as would be requisite for the establishment of a penitentiary-house. Another cause which appears to have contributed, and perhaps in at least an equal degree, to the production of the effect, is—the abolition, next to a total one, of the punishment of *death*. If this be so, then to the account of exertions must be added the effort (no slight one) necessary for giving up the favourite punishment; the punishment so dear to vengeance, hard-heartedness, prejudice, and indolence. On this subject, let the following fact speak in the first place:—

No. 1. Philadelphia; 1786: Liancourt; 1796, p. 38.—"In the year 1786, after the law had been passed which abolished the punishment of death and established the new system, two prisoners arrested for crimes (which according to the ancient jurisprudence were punishable by death, and by the new one only by imprisonment,) preferred to be judged according to the ancient law, rather than be subjected to so long and rigorous a detention; and particularly to that *solitary confinement* which *they started from with horror, though they had never experienced its bitterness*. They were confirmed in this choice *by the hope of a free pardon;* an event which would have restored them to immediate freedom. One of them was not deceived in his expectations; the other suffered death."

Observations.—From this instance, my Lord, may it not be inferred, and may not an instance thus happily apposite be pronounced sufficient of itself to support the inference—that it is not merely in the way of *reformation*, but by its subserviency to the still superior end, *example*, that penitentiary punishment, when well conducted, operates with so palpable an effect in diminution of the multitude of crimes? This same instance, is it not moreover sufficient to support the further inference that death, which *reforms* only by annihilation, which *incapacitates* for crimes only by incapacitating for everything—that death, of which the only recommendation is its supposed superior efficiency in the way of example, yields even in this point to that which is so much superior to it in every other? Turning again to penitentiary punishment, and comparing the exemplification here given of the terror inspired by it, while as yet unexperienced, with the preceding accounts of the deportment and apparent state of mind of the patients under and during the infliction of it, is it not, in both points of view, everything that, for the sake of all parties, one would wish to find it?—does it not, as far as is compatible with the melancholy complexion of the case, exhibit that combination so desirable in every case—the *utile cum dulce?* In prospect terrible, in experience tolerable?

Observe, my Lord, how the *separate* experiences on both sides are confirmed and crowned by this *comparative* experience. Of the *efficiency* of penitentiary punishment, the separate exemplifications have just been presenting themselves to your Lordship's view. Of the *inefficiency* of capital punishments, observations upon observations occur in the annals of the penal colony as recorded by its chief magistrate. At the time of execution,* at the time of dissection,† on a variety of other occasions, such as on all minds might have been expected to be, and on other minds would have been impressive. The insensibility of the survivors to the fate of their comrades and associates is matter of surprise no less than concern to the historian who

* Collins, I. 392. † Ib. 492.

witnessed it. Confronted together, these contrasted masses of experience, consistent though unconnected, would of themselves afford a proof of no light weight in the scale of prudential conjecture;—would afford that sort and degree of proof, which of itself might appear of sufficient strength to support a correspondent practical inference, with its correspondent *measure*. But what an accession of force is added to these separate experiments, when thus supported by a corroborative of so rare a complexion, as that which is afforded (to use the language of *Lord Bacon)* by this *conjunct* experiment! — the experiment, I mean, in which the two punishments being put in the opposite scales of the same balance, and in the same minds, the punishment of death is found light — the more temperate and regulated mode of punishment outweighing it.

XV. New South Wales — Economy — *Prospects, as per last accounts.*

The subject of *reformation* being thus far considered, *economy* presents the only remaining topic on which any very material lights can be thrown by the ulterior accounts. On this subject, the evidence might be supposed to have been favourable, or at least less unfavourable than before, if so conspicuous a topic were passed over altogether without notice. At the outset my intention was, to have exhibited the passages as before *in terminis*. Frightened, however, at the mass of paper already filled, I give up the greater part of the attempt I had projected on this ground, upon your Lordship's patience, confining myself, for the present at least, to a brief indication of the topics, with references instead of quotations.

Respecting *expense*, past or future—I mean expense to government, the ulterior accounts afford not to my view any indications worth referring exclusively to that head. Two other co-ordinate heads comprise everything that presents itself as worth mentioning: — perpetual probability of sudden destruction — hopelessness of a *non-convict* population — the existence of one, a circumstance that seems all along assumed as a condition *sine qua non* to the ultimate *success* (whatever may be understood by success) of the 14 years' experiment; — assumed by the concurring opinions of the late governor,* and the late chief magistrate,† gentlemen whose opinions on this as on every other head cannot but be as weighty in the scale of *opinion* as any observations of mine, were I to take upon me to present them in that character, would be light. As to *success*, what sort of result is to be understood by that expression is a question, for the answer to which I must beg leave to refer your Lordship to the gentlemen themselves, by whom the word, or what amounts to it, has been employed. What I myself should mean by it, has, I hope, for some time been tolerably clear—accomplishment of the several already enumerated *ends of penal justice*. Be this as it may, in the notice given by this previous announcement, I claim some merit, my Lord; because, if the *results* in question be not worth regarding, the *proof* is still less so: the paper, if thus far read, is thrown by, and so much of your Lordship's time is saved.

Three main causes of famine, and destruction by famine perpetually impending over the ever-so-much "improved" colony: each of them adequate to the effect, according to the time. *Fire — drought — inundation* — for so the case seems to be — there is always either too little *water* or too much. *Fire*, by the malice or phrenzy of the colonists themselves, converted alike by good or bad government into intestine enemies.* Fire, again, by hostility of external enemies, the native savages, ever ready, ever able, to return evil for evil, and for good likewise: † fire, even spontaneous, or in the language of law and religion, *by the visitation of God.*‡ From all these sources together, danger of fire continually brooding over the whole colony, and covering every acre of ground contained in it. Of *inundation*, the danger not quite so universal, being confined to the settlements on George's River and the Hawkesbury,‖ the only spots that present any hope of agricultural advantage.§ On the other hand, what it wants in universality made up in point of certainty, grounded on the topographical features of the country, and by the very latest accounts (dated August 1801,) realized to such a degree, that "*many of the settlers who had farms on the banks had in despair totally abandoned them.*"¶

To these, more awful scourges might be added, *insect vermin*, grubs** and caterpillars;†† plagues as destructive and as frequent as inundation: more and more ineludible than fire. These minor plagues indeed (it will occur) have their equivalent in other countries. True — but then such other countries have unplagued neighbours to draw upon for relief.

As there are years in which the crop does not amount to above a third of what it does in others;‡‡ hence, to guard against dearth, if dearth could be guarded against, would require amply stocked *magazines*: — recep-

* Letter I, p. 180.
† I. Collins p. 235; II. 40, 100, 210.

* II. Collins, 17, 69, 72, 129, 132, 197, 277. Supra, pp. 221–2.
† II. Collins, 15, 31, 32, 33, 40, 56, 68, 204, 209.
‡ Ib. 125, 139, 199, 334. ‖ Ib. 199, 289, 334.
§ Ib. 467, Let. I. p. 178. ¶ II. Collins, 334.
** Ib. 203. †† Ib. 272. ‡‡ Ib. 136.

tacles in which, over and above the ordinary provision for an ordinary year, more than two-thirds of a year's crop should be kept constantly in store.* The quantity of land cultivated on government account not being yet so much as a tenth part of the whole quantity in culture,† it follows, that to make any tolerable provision against famine, two-thirds of a crop, plus the nine-tenths of a crop, must be bought on government account of the settlers, and a constant overplus to that same amount be kept up by the same means. Here, then, comes a constantly *real* necessity for a prodigious quantity *apparently* superfluous. If the demands of this necessity are yielded to, then comes a proportionally heavy expense, and in the natural course of things, suspicions at home in consequence, reprimands in consequence of these suspicions:—if in consequence of these suspicions and reprimands, or otherwise, the demands of the necessity are not yielded to, then, on the other hand, comes *famine* : — nor that alone, but along with it the insufficient exertions in the way of expense made as heretofore in fighting against the famine. *Beau jeu* in all this (your Lordship may perhaps observe) for opposition: if opposition were to find a glance to bestow upon such trifles, and if half a dozen

* In my uninformed situation, I should have found it a matter of extreme difficulty to make any thing like a tolerably correct calculation of the proportional quantity of provisions requisite to be kept in store. From this difficulty the passages in the first part of Captain Collins' history relieve me in some measure, by fixing the quantity at a two years' stock. In November 1789, this in *fact* was the proportion landed;[a] and as to *opinion* in February 1790, after near two years' experience, the same quantity "*at the least*," was what "the governor, in all his dispatches, had uniformly declared the strong necessity of having in store for some time to come."[b] The date of this opinion (it may be observed) was a time at which the proportion furnished by the colony itself was as yet but very inconsiderable: whereas, by the last accounts, the quantity furnished by the colony within the year appears to have been nearly, if not completely, sufficient for the consumption of the year. To state the question with perfect precision would require more discussion than it were worth; but at any rate it does not appear that the demand for a *security-fund* of this sort is varied in any determinable proportion by the difference respecting the *source* looked to for the supply. At the time of that calculation, the danger to be provided against was the danger of *non-arrivals:* at present, if the *internal* resources of the settlement are to be trusted to, and no more provisions are to be sent thither from *without*, the danger to be provided against is the *internal danger*— the danger composed of *non-production* on the one hand, and *destruction* on the other. The *two years'* provisions spoken of as received in the colony almost two years after the arrival of the first and principal expedition, was, it should be observed, so much over and above whatever stock was at that time expected here at home to have been raised within the colony. The breeding part of the live stock, it may on the other hand be observed, is a resource capable of being added to the part destined for consumption, together with the vegetable stock in store. True: but the live stock itself depends upon the vegetable stock—a bad crop may reduce, and in the same proportion—the men themselves, and the cattle that should feed them.

The natural course of things seems to be— that to save the *expense*, which is the *certain* evil, and that which comes most home to gentlemen here at home—the supply should from henceforward be kept constantly deficient—the calamity, till it happens again, being as usual regarded as impossible. Of the two rival results—on the one hand sufficiency, and thence expense—on the other hand deficiency, and thence famine—that the famine should happen now and then to thin the ranks and lighten the budget, as before, seems at any rate the most convenient result, and so far the most probable. I speak of a *moderate* famine, of the customary established scantling; for if, instead of a fourth or so, the whole population were to be carried off by this or any other cause at once, this would be a sort of innovation: it might possibly make a sensation; and it seems not improbable, that the beginning the business again *de novo*—an operation requiring thought—might find somebody to object to it.

It appears, already, that an apprehended scarcity, such as that which struck off "a third of the ration" in January 1800, had not been understood to warrant the governor in forbearing to lessen the encouragement, the influence of which was all he had to trust to for any increase in the supply. It was but the month before that "they were told [the settlers in a body] *to prepare for the reduction that would certainly take place in the next season.*"[c] At this time there was not "more than 'six months'' provisions in the store at full allowance," for in the next month (January 1800,) when the reduction of the ration took place, there was "not more than *five*;"[d] and it was at the very moment of this declaration of scarcity, that an actual defalcation to the amount of 5 per cent.—an unpredicted, previous to the predicted one—was made from the price. Economy appears to have been at this time the *order of the day*, and the *order* must, humanly speaking, have come from gentlemen here at home. Men neither embrace starvation nor any approach to it, unless forced. Is it natural, that when one governor was not contented with less than a two years' stock, another governor should be so well contented with a five months' stock, as to take precisely that time for reducing the only encouragement men had for raising more?

Supplement to Swift's Directions to Servants. —*King's Upper Servants*—If you want to show what credit you have with your master, and how little you care for gainsayers, take as bad a measure as you can find; bad by repugnance to its pretended object, and doubly bad on account of the expense. Then, to show your economy, instead of giving the measure up, starve it. with the people concerned in it; which saves so much expense.

† I. Collins, p. 334.

[a] I. Collins, 83. [b] Ibid. 97. [c] II. Collins 274, 276. [d] Ib. 283.

thousand convicts in New South Wales were worth half the pains that have been seen to be taken about half a dozen seditionists, or supposed seditionists, in *Coldbath Fields*. Is the necessary provision made? Outcry against the *expense*:—is it withholden? then in God's own good time comes the *famine*, which, if it were the fashion to look to any such distance, would be a still better thing than the expense.

So again, about the *chandler's shop* already spoken of.* Is the shop sent out thither and opened?—then again comes the expense in that shape. Are the governor's promises on that head kept by gentlemen here, as in my instance they have been keeping their own engagements for these nine years?—then comes the impoverishments of the settlers—the already established reason for keeping up that enormity of price† by which the expense is let in, and the public money let out at another crevice.

It would be something, if at any expense the security could after all be purchased; but as the security increases on one hand, so does the danger on the other. These magazines, are they scattered over the face of the country?—so many stations, so many points to guard against depredation. Are they kept together in one mass?—the more comprehensive, then, the destruction they are exposed to suffer from the devouring flames. Each *Caligula* (in a state of things capable of giving birth to many Caligulas) beholds his wish thus realized: all heads standing upon one neck, and capable of being cut off at one stroke. The supposition, can it, in *that* situation, be [illegible] med a forced one? Even in the mild climate of the mother country, when symptoms of dearth break out, does not the actual *cautery* stand in the *materia medica* of the populace, upon the list of remedies?

But not to speak of a whole stock of settlers, how should so much as a single settler, henceforward at least, ever find his way thither, without insanity on his part, or cruel treachery on the part of those who sent him?‡ No tolerably assured source of supply, either for accustomed comforts, or so much as necessary tools and implements‖—no tolerably assured *market for produce* when raised.§ The chance depending, in the first place, upon the real wants of government; in the next place, upon the arbitrary will and pleasure of a single person, in a situation capable of making a tyrant out of a *Trajan* or a *Titus*.¶ Storehouses and dwelling-places requiring *repairs every year*,* and even on those terms (such is the law of the climate) not capable of being made to hold together above *ten years*.† *Property* (supposing it acquired)—*property* (not to speak of *person*) incapable of being *removed*, and exposed all the time to *depredation*, as well as to so unprecedented an assemblage of the causes of *destruction* as that referred to as above. No stirring from home without a *special license*; an instrument to be inspected and confirmed every two or three miles, by a man who may not be to be found, or may refuse to look at it,‡—every action of life depending, ultimately or immediately, upon the caprice of a governor, whose caprice is without controul, and whose whole course of government (as I propose to myself the honour of stating to your Lordship ere long) is one unintermitted, howsoever excuseable, violation of law. While a niche in a rock is to be had in *Nova Zembla*—I beg leave to ask, my Lord—could a man in his senses, supposing him apprised of all these circumstances, regard any otherwise than with abhorrence, the idea of becoming a settler in New South Wales?—in a country peopled almost entirely with characters, the importation of whom into any other "community," though it were in the smallest numbers, is compared by the chief magistrates to the "importation of the plague, or the yellow fever?"‖

After the view already given of the establishment, with reference to the avowed, or at least only avowable, ends of its institution, the sketch likewise given of the *eventual* probability of its destruction would to some eyes be productive, not of regret, but satisfaction: a satisfaction the more complete, the nearer that probability were looked upon as approaching to certainty. The worse the system, the more fortunate that the maintenance of it should be thus hopeless. Once admitted, this hopelessness would ease gentlemen of the responsibility, save them the expense of thought, relieve them from the burthen of reflection and debate. Such, I am inclined to think, would be the effect of the picture on some eyes:—whether your Lordship be or be not of the number, is a point altogether above the reach of the best observations that can possibly be made from so humble an observatory as mine.

XVI. English Hulks *and* "Improved Prisons"—*Topics deferred.*

After so much as has been said of the two specially contrasted systems—the system of *penal colonization* on the one hand, the *penitentiary system* in its most improved realized form, as likewise in its supposed still more

* II. Collins, 97, supra, p. 216.
† 10s. per bushel in December 1799; II. Collins, p. 276: in Norfolk Island, 15s. in January 1799; Ib. 196.
‡ Letter I. p. 182.
‖ II. Collins 92, 105, 114, 205, 269, 274, 305.
§ Ib. 106.
¶ Ib. 126, 269, 274, 276.

* II. Collins 139.
† Ib. 135.
‡ Ib. 26, 295.
‖ Ib. 294.

improved, though as yet unrealized form, on the other — a supplement of a very moderate length would suffice to complete the review of the several modifications of *chronical* punishment that have as yet been either exemplified or proposed among Britons and men of British race. "Hulks" and "improved prisons" are the heads under one or other of which all the yet remaining matter might be comprised. Principles being already laid down, a small number of additional pages would suffice for the application of them to these two topics. At present, however, considering how large the draughts are which I have been venturing to draw already upon a time so precious as your Lordship's—how complete the uncertainty is to a man at my humble distance, in what proportion, if in any, this or any such draughts from any such quarter will ever be honoured; considering with what imperturbable serenity your Lordship was pleased to view the *outline*, which it has been the business of this and the former letter to fill up — how incapable it was of producing on your Lordship's part any other perceptible effect than a philosophical reflection on the supposed frame of mind by which some other papers that accompanied it were supposed to have been produced; considering how impossible it is for me to know, or so much as to conjecture, whether the lot of convicts, or that portion of public security which depends upon the disposal of them, has ever yet been regarded, or is ever destined to be regarded, as worth a moment's thought, either by your Lordship, or by any of those other exalted persons with whom, when anything is acted, your Lordship acts; considering how muca easier, in certain circumstances, repose is than action, silence than justification, or even excuse; taught by a course of nine years' experience, how much superior your Lordship's situation is to every level of practical responsibility — how much inferior mine, and every public subject that has the misfortune to be connected with it, is to every level of effectual and exigible right; recollecting, with an emotion of not altogether uninterested sympathy, the mortification experienced by the well-bred visitor at Mrs. Salmon's circle, whose homage to a well-dressed lady was not sufficient to procure him the return of so much as a nod;—putting all these things together, my Lord, I have determined to consult my own ease at least, whether your Lordship's be or be not connected with it, by reserving to an occasion of future contingency what little may require to be said on those other uninteresting topics above glanced at;—and accordingly for the present, waiting with the necessary resignation that nod, which at one time it was said to be in your Lordship's contemplation to bestow, I have the honour once more to subscribe myself, my Lord, your Lordship's most obedient and humble servant,

JEREMY BENTHAM

Queen's Square Place,
Westminster,
17*th December* 1802.

A

PLEA FOR THE CONSTITUTION:

SHEWING

THE ENORMITIES COMMITTED,

TO THE OPPRESSION OF

BRITISH SUBJECTS, INNOCENT AS WELL AS GUILTY;

IN BREACH OF

MAGNA CHARTA,	THE HABEAS CORPUS ACT,
THE PETITION OF RIGHT,	AND THE BILL OF RIGHTS.

AS LIKEWISE OF THE

SEVERAL TRANSPORTATION ACTS,

IN AND BY

THE DESIGN, FOUNDATION, AND GOVERNMENT

OF THE

PENAL COLONY OF NEW SOUTH WALES:

INCLUDING

AN INQUIRY INTO THE RIGHT OF THE CROWN TO LEGISLATE WITHOUT PARLIAMENT

IN

TRINIDAD, AND OTHER BRITISH COLONIES.

BY JEREMY BENTHAM, ESQ.

OF LINCOLN'S INN, BARRISTER AT LAW.

LONDON: PRINTED FOR MAWMAN, POULTRY, AND HATCHARD, PICCADILLY: 1803.

CONTENTS.

A

PLEA FOR THE CONSTITUTION, &c.

PREFACE.

In two already printed Letters,* having for their direct object, not the *legality*, as here, but the *policy* of the penal colonization system, hints were given respecting the *illegalities*, which are the subject of the present sketch. At the same time, the publication of them in the ordinary mode was forborne, and the circulation of them confined to a few select hands: lest, before there should have been time for the application of a parliamentary remedy, the information thus given, of the illegality of the government there, should, by any of those indirect channels which are not wholly wanting, find its way into the colony, and be followed by any of those disorders, of which, in a community so composed, a state of known anarchy might so naturally be productive.

On that same occasion, mention was made of the case of the Ship *Glatton*, which in September or October had sailed with convicts for New South Wales.† On all former occasions, the vessels in which convicts had been conveyed had been private vessels: the powers given by the various transportation acts not being applicable to king's ships. The person to transport the convicts was to be a private individual:—he was to execute the business by contract; and the service to which the convicts were to be subjected, was to be rendered exclusively either to the person so transporting them, or to some other person or persons, to whom by such contracting transporter the right to such service had been assigned. The *Glatton* is a king's ship: the first, if I mistake not, that had ever been employed in that service. Setting aside the possible fiction of the king's captain having been converted for this purpose into an independent contracting merchant, and the king's governor into a character of similar description, it follows, that, in point of law, neither has the captain during the voyage, nor will the governor have at the conclusion of it. any more power over these exiles, than he would have over any other passenger. The eventual consequences, in respect of *trespass*, *murder*, and so forth, are too complicated, yet at the same time too obvious, to be unfolded here.

This intimation, though from so obscure a quarter, has not been altogether without its fruit. I speak of the transportation facilitating act, the act of 43 Geo. III. c. 15, dated 29th December 1802;‡ a statute which, from

* Letters to Lord Pelham, giving a comparative view of the system of Penal Colonization in New South Wales, and the Home Penitentiary System, &c.

† Letter I. p. 90.

‡ 43 Geo. III. c. 15, *29th December* 1802.—"An act to facilitate and render more easy the transportation of offenders."

"Whereas it is expedient that provision should be made for transferring the services of offenders transported in his Majesty's ships or vessels, in cases where no contract is entered into, or security given in respect of such transportation, and that his Majesty should therefore be empowered to nominate and appoint persons to have a property in the service of such offenders .... be it enacted ..... that whenever his Majesty *shall* please to give orders for the transportation, in any ships or vessels belonging to his Majesty, of any offender or offenders, who already have, or hereafter may be sentenced to be, transported to any place or places within his Majesty's dominions beyond the seas, it shall be lawful for his Majesty, by any order under his royal sign manual, to give, if he shall think fit, to any person or persons nominated and appointed for that purpose, in such order, a property in the service of any such offender or offenders, for such term or terms of life or years, or any part thereof respectively, for which such offender or offenders was, or were ordered to be transported, as to his Majesty shall seem fit; and on such nomination and appointment, such offender or offenders may be delivered to the person or persons so nominated and appointed, without any security being required or given for the transportation of such offender or offenders; and every person so nominated and appointed, and his or their assigns, shall have the like property in the service of such offender or offenders, as if such person or persons had contracted and given security to transport such offender or offenders, in the manner required by the act of the twenty-fourth year of his Majesty's reign, intituled, *An act for the effectual transportation of felons and other offen-*

its almost unexampled brevity, may, without much expense of paper, find a place at the bottom of the page.

The occasion which called forth this manifestation of parliamentary wisdom, was the then and still intended expedition of the Ship *Calcutta*, another king's ship with a similar lading, on a commission of exactly the same nature.

In this act, the powers I had ventured to point out as necessary for the ship that sailed without them, are precisely the powers that have been provided for the ship that is now to sail; and so far all is right. But the ship that sailed without them,—what provision is made in the act for *her* case? None whatever. To the case of all such convicts as may come to be transported, at any time *subsequent* to the 29th of December, the powers *are* capable of being applied: to whatever have been sent off *before* that time, they are *not* applicable. Captain Woodriff, whenever he sails, will sail (I doubt not) in the character of a lawful agent of the crown, provided with lawful powers: but Captain Colnett, (to whom I beg to be understood not to impute the smallest particle of moral blame,) Captain Colnett, for any warrant or protection that has been afforded him by this act, cannot have sailed in any other character than that of a kidnapper. For the exile, confinement, and bondage of Captain Woodriff's cargo of convicts, there will doubtless be a sufficient warrant under this act. For the confinement and bondage of Captain Colnett's cargo, there is no better warrant than there would be for the like coercion, if an equal number of his Majesty's titled subjects, swept out of a birth-day ball-room, were to be the objects of it. Needless *in toto*, or else insufficient by half: such, upon the face of this statement, is the dilemma, out of which, if any gentleman in a long robe, or without a robe, is able to extricate the measure, he will do good service.

The act is simply *enactive:* it is not *declarative.* By being made declarative it might have been made virtually retrospective: but declarative clauses are seldom to be found, without an introductory escort of sometimes real, but more frequently pretended "*doubts.*" Here the preceding illegality, of the powers which it was the business of *this* act to confer, was beyond all doubt. In the personal character of the truly honourable servant of the crown, on whose shoulders the mechanism of this disastrous business pressed, I behold, with pleasure, a cause sufficient to account for the exclusion of this, as well as all other disingenuous pretences.

Being without retrospect *in effect,* the act is still more palpably destitute of every operation of that kind, expressed in *direct terms.* The cause of the deficiency is not less perceptible in this case than in the other. The emotion of disgust and alarm, with which an eye of legal and constitutional sensibility could not but have shrunk on this occasion from every such retrospective glance, may be anticipated in some measure from the very title-page of this Essay, and I flatter myself will be pretty distinctly warranted, as well as accounted for, by the tenor of the ensuing pages. So foul, so frightful, was the ulcer, the surgeon durst not look it in the face.

Thus then stands the matter at this hour. The same act by which legality has been given to the expedition *about to sail,* confesses the illegality of that which is already on its way. A deeper probe, a broader plaster, are still necessary. A fresh act must be passed for the ship Glatton, or all pretence of consistency — all regard for official decency — all regard for the forms and fences of the constitution — must be disclaimed.

ders, and to authorize the removal of prisoners in certain cases, and for other purposes therein mentioned, or any other law now in force; any thing in the said act, or any other act or acts, to the contrary notwithstanding."

SECTION I.

SUBJECT MATTER — OBJECT — PLAN.

On the ground of *natural justice*, as well as *expediency*, a view, nor that a slight or hasty one, has already been given of the penal colony.*

The object of the present essay is of another order: the business of it is to examine the same establishment on the ground of *positive law:* and, in so doing, to state for the consideration of such of my fellow-subjects, if such there be, by whom the constitution under which we drew our breath may be regarded as worth preserving, the injury it has received from the system of misgovernment, by which this nursery of martial law was originally planted, and ever since, during a period of more than fourteen years past, has been conducted and upheld.

On the ground of *policy*, the measure had from the first presented itself to me as more than questionable: years many and many, before the particular inducements, by which I was led to a closer investigation, had so unfortunately occurred to me. On the ground of *legality*, it was not till very lately that so much as a suspicion had come across me.

In a survey taken of the system pursued by the government of the colony when founded, the *laws* passed for the foundation of it would not remain long unnoticed. Astonishment flashed from the first glance. Compared with

* Letters to Lord Pelham, &c.

the immensity of the superstructure, the scantiness of the basis exhibited a Colossus mounted upon a straw. Such is the impression, such the discovery, if so it may be termed by anticipation, that gave birth to the scrutiny, of which the following pages are the result.

Legislative power is, and all along has been necessary, for the maintenance of government in the colony of New South Wales. Lawful power of legislation exists not — has not at any time existed — in that colony. Actual power of legislation has at all times been — still continues to be — exercised there. The power thus illegally assumed, was employed, as it had been assumed, for oppressive as well as anti-constitutional purposes. Britons, to whom their country, with the whole world besides, was open by law, have been kept in confinement in that land of exile. Britons, free by law as Britons can be, have been kept in that land of exile in a state of bondage. Such are the propositions which have presented themselves, and which, as such, it will be the main business of the ensuing pages to establish.

Other propositions, though distinct in the expression, and more impressive on the imagination, are not distinct in substance, being virtually included in the foregoing ones. Of what passes there for *justice*, a great, perhaps the greater part, is so much lawless violence: magistrates are malefactors: delinquency, which, in the conduct of the most obnoxious of the governed, is but an occasional incident — is at all times, on the part of the governing class, and especially on the part of the head of that class, the order of the day. To a part, probably the greater part, of the mandates issued, *resistance* is a matter of *right:* homicide, in the endeavour to subdue it, would be — has actually, if the case has occurred, been—as the law stands at present—*murder*. Not a governor, not a magistrate who has ever acted there, that has not exposed himself — that to this hour does not stand exposed — to prosecutions upon prosecutions, to actions upon actions, from which not even the Crown can save him, and of which ruin may be the consequence.

Connected with these propositions of dry *law*, are others in which considerations of a *moral* nature are combined with legal ones. Among the numerous, or rather innumerable manifestations of lawless power, are indeed some — and probably (let candour add) even by far the greater number, which import no moral blame: which, legality apart, import rather praise than blame, so far as praise is due to necessary prudence; and which, in a word, want nothing but *legality* to be *laudable* ones: measures, I mean, taken for the maintenance of authority and necessary subordination; measures calculated for the prevention of mischief in all its various shapes. To this division will be found to belong, more particularly, if not exclusively, the acts of the possessors of power upon the spot: measures recommended at least to them, if not absolutely forced upon them, by their providence, by their experience: measures finding, perhaps in every instance, an *excuse*— in most, if not all instances, a justification (I mean always in a moral point of view) in the mischiefs and dangers of all kinds, with which so unexampled a state of society is encompassed.

To acts of another description no such justification, no justification at all, scarce anything that can be termed so much as an excuse, *in foro morali*, any more than *in foro legali*, will perhaps, if the following view of the matter be correct, be found applicable. Such are the acts by which the punishment has been continued in *fact*, after the term, during which the *law* had authorized the infliction of it, has been at an end. Of all such oppressions, the guilt will be found to belong indisputably, and I hope exclusively, to men in power here at home: *indisputably*, because the exercise of such oppressions was of the essence of the system: necessary to the production of the effect, on which alone so much as a pretence to the praise of *utility* could ever have been grounded: *exclusively*, because the views promoted by such oppressions were the views of the contrivers and arch-upholders of the system, and of them alone, not of those local agents to whom the execution of it was committed; and because it was not natural, that, among professional men, whose profession is naturally understood to exempt them from the investigation of legal niceties, so much as a suspicion should have arisen, that in a system put into their hands by their official superiors, and those composing the supreme executive authority of the state, anything should be wanting to render it conformable either to the spirit or the letter of the law; especially after the application, which on that very occasion had been made to the legislature itself for powers, and powers obtained in consequence.

Once more, it is not in the injury to individuals that we are to look for the main object of the present pages: nor yet in the so much more extensive mischief accruing to the whole body of the community, from the repugnancy of the system to every one of the *ends of penal justice*. These are the topics already handled at least, if not exhausted, elsewhere.* The grievance, by which alone the present representation was called forth, is of a still higher order. It consists of the wound inflicted on the whole body of the people, in what used to be felt to be the tenderest part

* Letters to Lord Pelham, &c.

— a wound in the vitals of that constitution, which, to our forefathers at least, was an object of such fond attachment, a subject of such unremitting jealousy. Over British subjects, the agents of the crown have exercised legislative power without authority from parliament: they have legislated, not in this or that case only, but in *all* cases: they have exercised an authority as completely autocratical as was ever exercised in Russia: they have maintained a tyranny — not the once-famed argumentative tyranny of forty days, but a too real tyranny of fourteen years: — they have exercised it, not only over this or that degraded class alone, whose ignominy may seem to have separated their lot from the common lot of their fellow-subjects, but over multitudes as free from blemish as themselves: they have exercised it for the purpose of exercising the most glaring of oppressions: for the purpose of inflicting punishment without cause upon those on whom the whole fund of just and legal punishment had already been exhausted.

The conclusions to which the investigation tends being thus announced, the proof will constitute the principal matter of the ensuing pages.

SECTION II.

POWER OF LEGISLATION — ITS NECESSITY IN NEW SOUTH WALES.

THE power of *making regulations* considered as reposed in any other hands than those of the supreme authority of a state, is neither more nor less than *legislative power*, though derived from a superior power of the same kind, and acting under the controul of it.

A general right of legislation is one of those branches of power, the existence of which may be stated, without much fear of contradiction, as necessary in every political community whatsoever, old established or new established: necessary — if, for short spaces of time, not absolutely to the very *being* of the state, yet at all times to the *well-being* of it.

In this country, during the infant and ricketty period of the constitution, the want of so important an article in the list of the powers of government was but too notoriously, as well as frequently and severely felt, in the intervals between parliament and parliament.

In a colony — in a new formed community — much more in the colony in question, at the time in question—a colony not yet formed, but to be formed — the existence of such a power may be pronounced altogether necessary to the very *existence* of the infant establishment.

The creation of such powers is a security that surely was never before omitted in the case of any thing that was ever called a *colony:* never, even in the case of a colony established on the natural and ordinary footing, by a population composed principally or exclusively of free settlers, impelled thither by the principle of social industry. How much more urgent the demand for it in the case of a population composed as in New South Wales! composed almost exclusively of such disturbed, discordant, dissocial elements!

It is a security never yet omitted in colonies the *least remote*, in local situation, from the mother country. How much more indispensable in a population to be transported from Britain to the very furthest point of the globe, at a distance more than twice as great as that of the eastern dependencies, and more than four times as great as that of the western!*

In the act of founding *a colony*, as distinguished from an originally independent state, two parties are necessarily concerned: — the destined *inhabitants* of the new territory, and the legal *founders* of it, their accustomed rulers, from whom they derive permission to quit their mother country, and assistance towards establishing themselves in this new one. But, on the part of the *founders*, as thus distinguished, unless it be the accidental contribution of pecuniary assistance, what was ever understood to be done by the *founding of a colony*, but the conferring, on persons of certain descriptions, settled or about to settle in the territory of the colony, the necessary assortment of the *powers of government?* an assortment of which the *power of legislation* has never been suspected, I believe, of being anything less than a necessary ingredient.

From one source or another — from within or from without — from intrinsic authority or from extrinsic — who ever heard of the *foundation* of a state, dependent or independent, without a power in it *to make laws?* No, surely: *Lucina sine concubitu* is not a more palpable absurdity, than the idea of founding a colony without providing any legislative powers for it.

Supposing the whole mass of law existing in the mother country to be transplanted in one lot into the colony, *judicial power* might, in this case, be of itself admitted to be sufficient: admitting always (what never can be admitted) that no need will ever occur for the imposition of fresh obligations. But even in the *oldest* established communities, that need is occurring every day; and surely the more *novel* the situation, the more urgent and frequent must be the demand for fresh obligations. I say *obligations:* for it is by such

* Speaking of *space*, I measure it here by *time:* for, of the two quantities, time — quantity of it necessary for intercourse — is the only one of intrinsic importance with a view to practice.

instruments, and such alone, that any provision can be made for the unforeseeable and infinitely diversifiable train of *exigencies*, of which such a situation could not but, in point of reason, be expected to be productive.

One omission it is time I should confess, in the observation of which the reader may not improbably have been beforehand with me. In speaking of the *existence* of such a power as necessary, I ought to have added, or the *belief* of its existence. To many an eye the distinction might appear an useless refinement; for without a *really existing* power of legislation, how in the nature of things, it may be asked, can the *belief* of it be produced? or, if it could be, who would set about producing it, and to what end or use?— questions pertinent enough these, but not unanswerable. The reader will soon judge.

The expedition was fitted out. It left the seat and source of regular government.* A governor went out with it: and with him went not out the smallest particle of legislative power, derived from the only source of legislative power — from the source, from whence other and inferior powers (*judicial* I mean) that at the same time were sent with him, had been derived — in a word, from *parliament*.

An act, brought in by administration, had been obtained of parliament to serve as a sanction for the measure: " An act to enable his Majesty to establish a court of criminal judicature on the eastern coast of New South Wales, and the parts adjacent."† Such is the title of the act: — no such power as that of legislation is in the title; no such power is in the act. What powers, then, *are* there in the act? Powers for creating courts of judicature, and no other. This was the professed business of the act: this the only business: the very title says as much. Powers are given by it—to do what? to create any *new rights?* to impose any *new obligations?* No such thing. Nothing but to punish " *outrages* and *misbehaviours*."‡ And what outrages and misbehaviours? " *Such*" (and such alone) " *as if committed in this realm would be . . . treason or misprision thereof, felony or misdemeanour.*" —" Whereas," says the preamble, " it may be found necessary that a *colony* and *civil government* should be established in the place." " *To establish* a civil government — that a " civil government *should be established*"‖— at least, established somehow and by somebody — was the professed object of the act. " *A civil government to be established*," and no power of making *general* regulations — no power of making laws — no, not in any case whatever — is comprised in it! If, without parliament, power could be found for legislating in all other cases, and for all other purposes, why not for the establishment of this or any other court of justice?

Under this provision of the law, an ordinance, suppose of the *prohibitive* class, is issued by the governor in New South Wales. In the words above quoted, we have a standard for the validity of such ordinance. The *act prohibited* by it, is it of the number of those acts which would be "*outrages*" or "*misbehaviours*" if committed " *in this realm?*"§ If not, then is the ordinance by which it thus stands prohibited, illegal and void: void beyond dispute, unless the power of making laws binding " *in this realm*" belongs to the governor of New South Wales, or some other person or persons legislating in New South Wales.

SECTION III

LEGISLATION — HOW FAR LAWFUL IN NEW SOUTH WALES.

ALL this while, from the time of the first landing of the first expedition to the time at which the historiographer of the colony took his leave of it, that is, from January 1788 to September 1796, ordinances were issued by the governor, and, as it should seem, by his sole authority. *Instructions* were also from time to time received by him from his superiors here at home, and ordinances issued in consequence of, and therefore (it may be presumed) in conformity to, these instructions. And these ordinances are not, like the king's proclamations in Great Britain, mere acts of monition, or other acts, grounded on *pre-existing* acts of the legislature, but *original* acts of legislation, forbidding, and thereby converting into "*misbehaviours*," a variety of acts, such as, if performed " *in this realm*," whether in England or in Scotland, would not have been " *misbehaviours*," would not have belonged to the class of " *misdemeanours*," or to any of those higher classes of delinquency (*treason*, *misprision* thereof, or *felony*,") specified as such in the act.

This assumption of power, how shall it be accounted for? On the part of the governor,

* 13th May 1787. Collins, I. 3.

† 27 Geo. III. c. 2.

‡ *Outrages?* What a word for the basis of a system of legislation! " *Outrages*," too, as well as " *misbehaviours:*" when the import, vague and declamatory as it is, it is at any rate included in *misbehaviours*.

‖ " And whereas it may be found necessary, that a colony and a civil government should be established.... And that a court of criminal jurisdiction should also be established..... with authority to proceed in a more summary way than is used within this realm, according to the known and established laws thereof....." Section 1. Preamble.

§ " *This realm?*" What realm? Of the impropriety and inexplicability of the term, notice will be taken a few pages farther on.

there can be little difficulty. Whatsoever were given to him for law, by his superiors at the Council Board, or the Secretary of State's office, would naturally enough, one may almost say unavoidably, be taken by this *sea captain* for law. By this sea captain: for such has been the profession and rank of every gentleman who has ever as yet been invested with this important office.

On the part of these authorities at home, some imagination or other must necessarily have been entertained about the *right*—either that a right to confer on the governor this power was actually existing in the authority thus assuming and exercising the power; or at least that of the existence of such right a *belief* would be entertained by the several parties interested — a belief which, though it were ill-grounded and erroneous, would, so long as it continued to be entertained by all parties, have the same effect as if well-grounded and correct.

On the first supposition, they went to work *bona fide*, believing that to be *legal* which was determined to be *done*. In the other case, conscious of the illegality of the course they were pursuing, they determined to persevere in it notwithstanding; perpetual fraud trusting for its success to perpetual and universal ignorance.

Of two such opposite conceptions, which, then, is it that, on the face of it, carries the strongest probability of having been entertained?

The first hardly, for what is there that can be found to countenance it? Legislative power exercised by an officer of the crown, for such a course of years, without authority from parliament! On what possible ground could any conception of the legality of such a system be seriously entertained?

I will make the best case for it in my power: I will ransack imagination for possible grounds.

That the supposition was, *in the whole extent of it*, without foundation, would indeed be evidently untrue. That there was and is a considerable stock of lawful power in the colony to work with, is palpable enough. That that power was of a nature to serve as a *succedaneum, so far as it went*, to a regular and expressly-constituted legislative power, must also be admitted: manifest enough, I accordingly admit, it is, that a power of legislating over certain *persons*, and in certain *cases*, was *virtually* among the contents of it. But, in addition to all *such* persons and cases, legislation (so the fact is) has been exercised there (as indeed it required to be exercised there) over abundance of *other* persons, and in abundance of *other* cases.

To show this, I will in the first place exhibit a short survey of the stock of the colony, live and dead, persons and things, thrown into classes with this view. It will then be easy enough, and with a degree of accuracy sufficient for the purpose, to go over them, and say of each, this stands subjected, or this does not stand subjected, to the powers of all-embracing legislation, that have been exercised in New South Wales, by the sole authority of the king's governor of New South Wales.

In the course of a period of nine years and a half, comprised in the history given of the colony by its chief magistrate, the inhabitants, considered in respect of their subjection to any ordinances of the governor (or of any other person or persons pretending to the exercise of legislative authority there) may be distinguished into the classes following:—

1. *Officers and privates*, in the *land* branch of the king's military service, subject to orders, as such, under the *mutiny act*.
2. Officers and privates in the *naval* branch of the king's military service, subject to orders, as such, under the *articles of war*.
3. Persons in the king's service in a *civil* capacity: as such, not subject either to the articles of war or the mutiny act: such as *chaplains, surgeons, superintendents, &c.*
4. Commanders and crews of *British vessels* in *private* service.
5. Commanders and crews of *foreign vessels.*
6. Convicts still in a state of legal bondage: the terms of punishment specified in their respective sentences being as yet unexpired. For distinction's sake, they may be called *convicts non-emancipated de jure*, or, still more shortly, *non-expirees.* The reason of this distinction, and the nomenclature founded on it, will appear immediately.
7. *Wives, children*, and other relatives, if any, of non-expirees.
8. *Expirees.* Convicts emancipated *de jure: de jure*, in contradistinction to *de facto.* The distinction is altogether a necessary one: for, in point of fact, one of the characteristic features of the establishment, and crimes of its foundation, was — that those who by law ought without exception to have been *free*, were, and were to be, in a multitude of instances, *retained in bondage.*
9. Wives and children, and other relatives, of *expirees.*
10. *Unblemished* settlers: that is, all settlers not belonging to classes 6, 7, or 8, or any of the preceding classes. In this instance, and for this purpose, the term *free settlers* (the term employed elsewhere) would not serve: since, if law had been the standard, classes 7, 8, and 9 would have been as *free* as these.

1, 2. With reference to the two first of these ten classes *(Army* and *Navy,)* the right

of legislation may pass without dispute. Conditions might be stated as requisite—limitations might be suggested — but the discussion would be superfluous. For the purpose of the argument, I suppose and admit proper measures to have been taken, and by the proper authority, to subject all persons of these two descriptions to the authority of the governor in that behalf.

3. Over persons of the third class (*servants of the crown* in *civil* capacities,) supposing power to be given to the governor to dismiss them from their respective situations, this power operates of course as a means of *influence*, tending to produce a disposition towards a general submission to his will, howsoever signified. Setting aside this means of influence, their condition is noways different from that of class 10th, *unblemished* settlers.

4. With reference to commanders and crews of *British vessels*, the right might also be admitted, for the purpose of the argument: — though, in this instance, it appears liable to particular objections, which will be mentioned presently.

5. With respect to the commanders and crews of *foreign vessels*, the right shall, for the same purpose, pass unquestioned.

6. With respect to *non-expirees* (convicts still in a state of *legal* bondage,) their legal subjection to the governor, and consequently to all such orders as a master in England has it in his power to issue to an indented servant, may be pronounced unimpeachable: I mean, supposing the course directed in that behalf by the act to have been pursued;* and supposing the *civil* branches of the law of *England*, or of *Scotland*, or of both together, or of *Great Britain*, to have grown up in New South Wales, like so many weeds, without having been ever planted there: of which more will be said presently. That the spirit of the old transportation system, which it is the professed object of the act to continue, cannot have been conformed to, I have already had occasion to explain in another place.† But, if the words of the act have been pursued, in the manner that will also be stated, I see nothing to hinder the power of the governor from having been rendered unimpeachable in relation to this class: always assuming the fulfilment of the unfulfillable conditions just mentioned.

7. 8. 9. 10. Over *expiree* convicts, their wives, children, and other dependent relatives—over the *wives*, *children*, and other dependent *relatives*, even of *convicts* themselves in a state of legal bondage — over unblemished *settlers*—the governor neither had, nor could have had, nor without fresh authority from parliament can ever have, any more power (I speak always of legal power) than I have.

Over any *stores* entrusted to his care, the governor, in his quality of agent to his Majesty, the legal proprietor of those stores, will have had the same legal power as any other proprietor anywhere. These stores being in a large proportion among the necessaries of life, from the proprietorship of these means of subsistence, must of course result a proportionable degree of influence.

But influence — *natural influence* — is one thing: *legal power* is another. To the production of an effect by influence, *consent* is necessary: special consent *precedently* given to each act, by the production of which the influence has fulfilled its purpose: to the production of the same effect by power, no such consent is necessary. Were the governor to say to this or to that man, being a man not in bondage to him—"Do such or such a piece of work, or you shall have no bread served out to you to-day—an order *thus sanctioned* may be admitted to be legal, though without any previous authority given by parliament for the issuing of it. But if, addressing himself to the same man, and speaking of the same piece of work, the governor were in like manner to say (as he has so often done)— "Do this, or you shall be whipped" — here would be an ordinance illegal and void.

The same thing may be said of any *general* ordinance addressed to *all* persons without distinction, with or without any *special* sanction annexed to it, and whatever may have been the utility or even necessity of it: so far as the persons bound, or otherwise affected by it in point of interest, are persons subjected by any *special legal commission*, to orders from the governor, so far, and as to those persons, it is good and legal. Beyond this, and as to all other persons, the same ordinance is illegal and void. As for example: orders that no persons shall, for such a time, go beyond such and such bounds:‡ orders that no man shall build, or begin to build, a vessel of a size beyond such and such dimensions.‖

I take for granted (always for the purpose of the argument,) that whatever power of legislation *could* be given by the crown, to anybody, to be exercised in this colony, *has* all along been given by the crown to the several successive governors. All this not-

* 24 Geo. III. sess. 2, c. 56, § 1, 13: which it may have been till of late; but could not have been in the case of the ship Glatton, which, having sailed in September or October, with about 400 convicts, without any legal power for consigning them to bondage, gave occasion for the act passed in December, by which legality has been intended to be given (and therefore I conclude, without having yet seen it, was given) to the transaction, by an *ex post facto* law. [Not given: see *Preface.*]

† Letters to Lord Pelham. Letter I. p. 190.

‡ II. Collins, 286, 295.

‖ I. Collins, 159, 488; II. 53.

withstanding—all this being admitted—what I maintain is, that, no such authority having been given to the crown, in the only act in question,* by the legislature, it was no more in the power of the crown to confer any such power of legislation (except the limited, and not so denominated, but only *virtual* powers of legislation above excepted) on the governor, or any other person or persons, than in mine.

SECTION IV.

AMERICAN, &C. LEGISLATION NO PRECEDENT FOR NEW SOUTH WALES.

THE nature of the case not furnishing any just grounds for the assumption of any such legislative power as has actually been exercised, I come now — (still acting under the difficulty already recognised) — I come now to fish out imaginary and possibly pretended grounds, at a venture.

True it is accordingly, certainly in general, and for aught I know, without exception — and as such I shall admit it — that among all the *charters* in which the governments in the several existing English, British, or quondam British colonies in America (West Indies included,) have respectively had their rise, there is not one, for the granting of which any powers, previously or subsequently to the concession of it, had been obtained from parliament.

Still more clearly true it is, that even in the instance of *Georgia* (the last colony established before the revolt, established at so late a period as in the sixth year of the reign of the late King,) when an act of parliament was passed, having for the object of one of its clauses† (as declared in what may be called *a clause* in its longwinded title,) the "enabling his Majesty . . . . to pay . . . . ten thousand pounds to the trustees for establishing the colony of *Georgia*," no powers are given to the crown, any more than in any preceding or subsequent act, for the purpose of legalizing such powers, as the crown must then recently have been creating for the government of that colony.

But, *since that period*, and *before* that of the passing of the act for the foundation of the colony of New South Wales,‡ this practice of organizing governments for British dependencies, in territories out of Great Britain, by the sole power of the crown, may, I think, be said to have been relinquished, and virtually acknowledged to be indefensible. I mean, by the precedent, set by the act commonly called the "*Quebec Act*,"‖ in which, whatever was done in the way of establishing subordinate powers of *legislation*, was in *that* case, as well as in the case of *judicature*, done either by parliament itself, or by authority therein given to the crown by Parliament.

Even in the same reign which thus gave birth to the latest instance of unparliamentary colonization, and not more than seven years after that instance, the legality of the practice appears to have been regarded as matter of *doubt*, at least by parliament itself.§ At this time, among the American colonies, there were many, that under the powers of legislation granted to them from the crown, had passed acts of their own, *restricting personal liberty* (as in New South Wales)—restricting the right of departure out of the precincts of their respective territories. Acts made (says the preamble of the British act) "for the preventing the carrying off, from the said colonies or plantations, any servant or slave without the consent of the owner, or the carrying off from thence any *other person* or persons *whatsoever*, until such persons shall have taken out his ticket from the secretary's office within such respective colony or plantation, in such manner, and under such penalties and forfeitures, as in and by the said several laws is declared and provided." But even at this time, so little satisfied was parliament of the legality of the restraints thus imposed — in other words, of the legality of the powers under which they were imposed — so far at least as among the persons thus legislated upon were included, viz. "commanders of private ships of war, or merchant ships having letters of marque," — that in the act, and by the clause, from the preamble of which the passage above quoted is copied, provision is made for the declared purpose of giving legality to those same laws: "Be it *enacted*," says the statute, "that all commanders (as above) *shall*, upon their going into any of those ports or harbours, *be subject* and they are hereby determined to be subject, to the several directions, provisions, penalties, and forfeitures, in and by such laws made and provided, anything in this act to the contrary notwithstanding." ¶

* 27 Geo. III. c. 2.

† 6 Geo. III. c. 25, § 7.

‡ 1787.

‖ 14 Geo. III. c. 83.

§ 13 Geo. II. c. 4, § 20. No. 1740.

¶ The words "*are hereby determined to be subject*" might, if they had stood alone, have been taken for words of mere *adjudication*.... But before these come words of enactment "*shall . . . . be subject.*" From the *non obstante* clause it might again be argued, that nothing more was meant by this provision, than to save those colonial laws from being overruled by the other provisions in the *same* statute: and therefore, that the effect of this section in it was nothing more, than to *leave* the legality of these colonial regulations upon its own bottom. But upon examining the act it will be found, that there is not any part of it to which the provision in this section bears any specific or effectual repugnancy. It is only from some perfectly vague and incon-

Among the powers actually exercised in New South Wales, with or without instructions from hence, conformably or unconformably to such instructions, is that of prohibiting or "preventing" masters of private vessels from "carrying off persons" from the colony, without special permission from the governor, particularizing each person permitted in each instance. Upon the exercise of these powers depends the whole system of government in this penal colony: every use which anybody could ever fancy it good for, or capable of being made good for. Even in America, and so early as the year 1740, the legality of these powers was looked upon as being so *questionable* at least (to say no more), as to require for the confirmation of it the authority of Parliament. In *America*, these powers were thus confirmed, and were therefore legal: but in *New South Wales* they have *not* been thus confirmed; for America is the only *place* mentioned in the act — American laws the only "*laws*." New South Wales has nothing in it that ever was a *law*, or so much as called *a law*, and America (God be thanked) has no such colony in it as New South Wales.

clusive inferences that any such apprehension could arise. But it requires little acquaintance with our statute law to have observed, how ready such apprehensions are to present themselves, and how ready the draughtsman is to quiet them with the customary *non obstante* opiate. Seven years had at this time scarce elapsed, since parliament, in the very act of supplying with money the embryo colony, sat still and saw the crown monopolize the supplying it with the powers of government. But at this latter period (1740) the tide, it seems, had already turned: and the wonder will be the less, that 34 years afterwards, when a new constitution was to be given to *Quebec*, parliament exercised the whole authority, and took upon itself the whole management of the business.

Will it be said — the confirmation of these colonial laws was necessary, so far and so far only, as they undertook to bind *others* of his Majesty's subjects, natives of the *mother country*, visiting the colonies for a time only in the course of office or of trade? I answer in the words of the court of King's Bench in a case that will presently be mentioned.[a] Among the "propositions, in which both sides seem to be perfectly agreed, and which indeed are too clear to be controverted," is "The 4th, that the law and legislative government of every dominion equally affects *all* persons and property within the limits thereof; and is the rule of decision for all questions which arise there. Whoever purchases, lives, or sues there, puts himself under the law of the place. An *Englishman* in *Ireland*, the Isle of *Man*, or the *Plantations*, has no privileges distinct from the natives." So far *Lord Mansfield.* If, then, these American laws were binding upon *anybody* — were binding upon *Americans*, they were *already* binding upon *Englishmen.* They needed no act of parliament, to confirm them in their application to Englishmen and so forth.

[a] Campbell and Hall, Cowper's Reports, p. 208.

SECTION V.

EVEN IN AMERICA, THE CROWN HAD NO RIGHT TO LEGISLATE WITHOUT PARLIAMENT.

RELINQUISHED, as it has been, no otherwise than *tacitly*, if at all (for the point is not worth arguing,) if the power had been *declared* illegal, and abolished by express words, it would not have been so disposed of without very sufficient grounds. That over English subjects in England, or anywhere else, the king should, by himself or by others, exercise legislative power, without the concurrence of parliament, was repugnant to the constitution, was repugnant to Magna Charta.

True it is, for aught I know, that till the reign of George the Second, till the year 1740 at least, as above, it never had been disputed or doubted of: and the train of precedents by which it has been exercised, commences with what appears as the *first charter* given to the *first colony*, in the reign of James the First,* in 1606, or thereabouts.

But, in the days in which the practice thus originated, the exclusive right of parliament to legislative power was far from being defined as now. Even within the territory of England — on this, and that, and other ground — the king by his *proclamations* would be legislating without parliament, and even in spite of parliament. Whatever parliament would endure to see him do, this and more he was sure to do without parliament. By monopolies, by ship-money, by dispensations of penal statutes, on one pretence or another, he was even *levying money* without parliament. The very existence of parliament was a matter of perpetual contingency. At all times it depended upon the king's pleasure whether there should ever be another. And so long as he could contrive to go on with existing powers, and upon existing funds, he had everything to lose and nothing to gain, by calling to his aid any such troublesome assistance.

Even in *Lord Coke's* time, had this mode of legislating without parliament been questioned in the King's Bench, it would not have stood its ground: at least if Lord Coke had at that time been in disgrace, and the decision had depended on Lord Coke.

"King Edward the Sixth did incorporate" (says he†) "the town of St. Alban's, and granted to make ordinances, &c. They made an ordinance upon pain of imprisonment, and it was judged to be against this statute of *Magna Charta. So it is if such an ordinance had been contained in the patent itself.*" Thus far Lord Coke. The train of reasoning is

* See Lind's Remarks on the acts of the 13th parliament relative to the colonies, 1775.

† 2d Inst. 54.

evident. It was by the glaring illegality in the case *last* mentioned (which is the *feigned* case,) that light was thrown on the covert illegality in the former case, which was the *real* case. It was a case actually decided, decided in the Common Pleas, and reported by Lord Coke himself.* The decision was given in the 38th year of Elizabeth, and even Elizabeth submitted to it.†

Had the first charter that was ever granted for the foundation of an English colony (say the charter, granted in 1606, for the colonization of the tract of land then comprised under the denomination of Virginia by James the First,)‡—had this first charter been questioned as illegal—as contrary to the decision in the St. Alban's case, in vain would it have been to have said,—"This case is different: THAT applies to Englishmen wishing to legislate in England: THIS applies to Englishmen wishing to legislate in a distant, and as yet unplanted region." To warrant any such distinction, there was neither principle nor precedent. Not *principle:* because, as to hardship, if Englishmen are to be legislated upon otherwise than by parliament, how was the hardship lessened by their being in the then wilderness of America? in a quarter of the globe, so far out of the reach of the protecting hand of parliament? Not *precedent:* for, of an attempt to subject them to legislation in this mode, the instance in question is, by the very supposition, the first instance.

The right of thus granting away the powers of parliament passed (it is true) unquestioned. Why? because nobody ever started up, to whom it had happened to conceive himself as being concerned in interest to question it. For, if a man went from England to live there, it was because he found it more agreeable to him to live there under those laws, than to live in England under English laws: and if at any time a man preferred English laws, England was at all times open to receive him. Whatever was the *cause*, such at least was the *effect:* the right remained unquestioned; and, remaining unquestioned, usurpation had time to clothe itself in the garb of law.

Admitting, that on any *one* mass of territory, having English owners, and not being, or having passed, under the dominion of any foreign power, the concurrence of the three estates is necessary to legislation, no reason can be given why, on any principle either of *utility* or *analogy*, it should be less necessary on any *other* spot so circumstanced. By remoteness from the natal soil—from the seat of connexion and protection—the hardship of whatever is looked upon as *tyranny* is not lessened but enhanced. The sense of *liberty* (of what is meant by *liberty* in one of its thousand senses) has not been found to evaporate by expatriation in English *men*, as the sense of smell has been said to do in English dogs. Of Englishmen surely it may be said, if of any men, *Cœlum, non animum mutant, qui trans mare currunt.*

For whom, or what, was it that the protection afforded by *Magna Charta* was intended? For the *inhabitants* of the land, or for the *soil* only?—for the flesh and blood, or only for the stocks and stones?

A lawyer, who should attempt to get rid of the application, of the case of the charter given to certain inhabitants of St. Alban's, to the case of a charter granted to certain inhabitants of other places in England, must answer boldly—"Only for the stocks and stones. Englishmen, the moment they get out of sight of the stocks and stones of England, for whom alone Magna Charta was designed, are neither worth protecting nor worth governing." But, unless it be on a spot, which being under foreign owners, affords a protection and a governance of its own, in what book will he find a colour for saying, that Englishmen, by being out of sight of English ground, are either out of the *protection* or out of the *governance* of an English parliament? Limited as the power of an English king is over Englishmen in England, in what book will he find that it is absolute over them everywhere else?

Will the portion of *consent*, of popular consent, given *in the first instance* to these charters, or the consent given *in succeeding times* to the laws made in America, in the several colonies, in consequence of these charters—will any *such* sanction be urged in proof of the original validity of a purely royal act, thus attempting to legislate over Englishmen without parliament?

Alas! what a cloud of illusions is involved in that little word *consent*, employed, as it is but too common for it to be employed! But, without plunging into any such discussions, it is sufficient to say here, that no such *unparliamentary* consent had any weight in the *St. Alban's case.* There never could have

* Coke's Reports, part 5, p. 64. Case of the corporation of St. Alban's, called by him *Clark's Case.*

† There was something more in this than in ordinary cases. A snake was seen, or thought to be seen, in the grass. Even in that age of general abjection and judicial dependence, the judges spied it out, and took fire at it. What little constitutional blood a man could at that time find in his veins, it called up in their cheeks. *More is meant* (says they) *than meets the ear. This is an attack upon Magna Charta: that peculiar and inestimable security of Englishmen, which (so often has it been broken into) has more than thirty times been confirmed.* "C'est ordinance est encounter le statute de Magna Charta, cap. 29. *Nullus liber homo imprisonetur.* Quel act ad estre confirm, et estably oustre 30 foits, et lassent le plaintiff ne poit alter la ley in tiel case."

‡ See Lind on the Colonies, p. 94, 1775.

been applied, to the law of any American assembly of succeeding times, the *actual* consent of so great a proportion of individuals to be governed by it, as there probably was in the *St. Alban's* case. But this did not hinder the attempt made in that case (the attempt on the part of the king, in conjunction with a portion of the inhabitants of that one town, to legislate, on pain of imprisonment, over the rest) from being disallowed: disallowed on the ground of its being an invasion of the rights of parliament.

What is the consent required by the constitution to give validity to a law? The consent—not of a part surely, but of the whole. It is not the consent of that part of the king's subjects for whose exclusive advantage the law is made, that is sufficient to give validity to a law, by which others, not sharing in the benefit, are attempted to be bound: if it were, there would never be any want of consent to the worst law. Neither then, nor since, has the consent necessary to give validity to any English law, been either more or less than the consent of the two sets of trustees for the whole body of the king's subjects—the two *other* estates of Parliament.

The question is, whether the king, with the assent of a few persons named by himself, had it in his power to repeal, *pro tanto*, the statute called *Magna Charta?* The answer is given by the judges in the *St. Alban's* case: "L'assent ne poet alter la ley in tiel case." If this be not the very best of French, better English at least cannot be desired.

To supply what is thus in contemplation of law wanting in point of *consent*, will any such topic as that of *abstract utility* be resorted to? Will it be urged, in the view of giving validity to the illegal mass of pretended law, that the *benefit* of all parties followed from it? This benefit, admitting it in its full extent, this benefit, destined to be reaped in after ages, will it give retro-active validity to an act void from the very first instant? If so, at what point of time was it that, on a sudden, and without any efficient cause, an illegal act was thus converted into a legal one?

Legality, it must be remembered, not *expediency*, not abstract utility, is the question here: to confound the two ideas would be to tear all law up by the roots. Admitted in the fullest extent, the alleged expediency would prove no more than this, viz. that, had James the First obtained, by a law of parliament, authority for the foundation of his first colony—authority for the powers conveyed by the charters, in virtue of which this colony was founded—had the king so done—a law to that effect, if passed, *would have been* a good law: and so in regard to the several other *real* colonies, *real* charters, and correspondent *ideal* laws. But, the expediency of all these *ideal* laws, does it prove them *real* ones? does it prove that any such acts of parliament were actually passed?

When a practice is repugnant to acknowledged principles, the case of *general warrants* is sufficient to show how little force there is in mere official precedents, however numerous the train of them, and however ancient the commencement of it. For the purpose of that case, a list of *general warrants* (a list of the cases in which authorities of that description had been issued by the servants of the crown) was published at the time.* It begins with the Restoration; not surely because there were none of any earlier date (for such there must have been in numbers,) but because it was not conceived that authorities of that kind, issued at any less constitutional period, could possess any tolerable chance of being looked upon as *good precedents*.

Prior to the issuing of the first general warrant, there was no direct judicial decision against *general warrants*, as there was against legislative power exercised by the crown without parliament, in the case just mentioned: yet *general warrants*, spite of the number of precedents and length of the practice, could not stand their ground. Against *general warrants* there was nothing but *principle*. Against *colonization charters* there is the principle, and a direct *judgment* grounded on it. And who is there that will deny that, in the scale of common law, a thousand unjudicial official precedents are not equal to one judicial one?

SECTION VI.

NULLITY OF LEGISLATION IN NEW SOUTH WALES, FOR WANT OF AN ASSEMBLY TO CONSENT.

ALL this, however, is but skirmishing—matter of illustration, not of necessary argument. For, though the right of the crown to found colonies (as the *American* colonies were founded) without parliament, were ever so well established, a claim in that quarter to exercise or create legislative powers, to be exercised over Englishmen, Scotchmen, or Irishmen, in *New South Wales*—in this *colony sui generis*—in this so denominated, but perfectly nondescript, and newly discovered species of colony—would not be the less unfounded.

* The documents printed in that list would not be found all of them to come within this description: but of one sort or other there are 136. The title of the book in my possession is—"*Copies taken from the Records of the King's Bench, of Warrants by Secretaries of State*," &c. 4to, 1763. No bookseller's name.

In all the several charters by which legislative power, whether *per se* or *per alios*, was exercised by the king, there were two common features, and those most indispensable ones:—1. *Consent* on the part of the colonists as to their subjection to such powers—*irrevocability* of the privileges granted by such charters—irrevocability of the king's act, whereby such powers were created, or the right of creating them conferred.

The *irrevocability*, though a feature perfectly distinct from the *consent*, was a natural, and one may almost say, a necessary consequence of it; or rather preliminary to it. For what man of common prudence would have gone to embark his property and his prospects, under a form of government, in which, so long indeed as it remained unchanged, he looked upon them as safe, but at the same time without any security against its being changed at any time—changed into some unknown arbitrary form, under which every thing would go to wreck—changed without his being heard, and at the suggestion of some court favourite, whose object would be of course to extract plunder from the change?—Not general satire—particular history is here in view: *Elizabeth* and *James*, with their *favourites* and their *monopolies*.

The irrevocability of the sanction given by the crown was therefore of the very essence of the case. This attribute of it was recognized all along by the judicial power. Even in the most arbitrary times, the crown itself never pretended that its own charters of this kind were revocable at its own pleasure. The utmost of its pretensions was—that for certain causes, these powers of subordinate government were susceptible of being forfeited: it belonged to the judicial authority in that behalf (the Court of King's Bench) to pronounce—to pronounce judicially in each case—upon the existence of any such cause of forfeiture. And in the annals of that court, and of the colonies, are contained divers instances of prosecutions instituted on that ground, against colonial governments, and of resignations made of charters, under the apprehension of such prosecutions.*

As to consent (by which I do not mean a presumptive, constructive, fictitious, pretended, general consent, but actual, direct, individual, consent;) immaterial as the circumstance is in this view, under a government already formed, in a territory into the precincts of which a man has been introduced either by *birth* or *voluntary self-conveyance*—nugatory as any argument grounded upon it would be in the *ordinary* state of things—yet in a new formed, or forming government—in a new planted, or about to be planted, colony—every thing depends upon it: *utility*, and therefore that law, which so far, and so far only as it has utility for its basis, is any thing better than oppression and abuse, depends upon it altogether. To a man's being *born in* a country, *his* consent cannot be taken—but to his being *conveyed* to it, his consent can be taken; and, on its being taken or not, depends a Pandora's box of miseries and injuries.

In New South Wales, not only was this most indispensable of all requisites to the foundation of a colony—to the establishment of legislative power in a colony, wanting—notoriously wanting—on the part of the great mass of the intended population; but the getting rid of so troublesome a condition—the weeding it and eradicating it out of the about-to-be-new-planted colony, was the very object—the professed object—the sole professed object—of the foundation of this vast receptacle of penal suffering. If, in point of fact, it should ever acquire a title to the name of a "*colony*"—(the name bestowed upon it in the tenor of the law made for the foundation of it,)† it could only be in so far as the persons sent thither against their wills, and having a *legal right of departing* from thence at the expiration of certain terms, should, by *irresistible power, in defiance of that right*, be kept there each to his life's end.

In common *intendment*—in common, and not merely in vulgar, but in deliberate and well-considered language—permanence of inhabitancy is acknowledged to be of the very essence of colonization. Accordingly, in the disputes that of late have arisen on the affairs of the East Indies, the language on one side is, "To do thus or thus would be colonization:—as you tender your existence, forbear to colonize."

Force *under* the law, was to plant men there; force *against* law, was to keep them there: and when, under the law, they were planted, it was for this very and only end and purpose—that against law they might be kept.

NOLENTES *per populos dat jura* should be the royal motto, in this as purely royal, as it is daringly anti-parliamentary, colony of New South Wales.

So much as to the first mentioned condition, *consent*—consent to habitancy and subjection. But this condition, a condition so inseparable to the foundation of every colony that is any thing better than a bastile, being so essentially wanting to the foundation of this colony, it seems almost superfluous to extend the observation to the other kindred condition—*irrevocability of privilege*. That which was never granted, cannot easily be revoked. So far the inhabitants—the chosen

* See Lind, Remarks on the Acts of the 13th Parliament, 1775.

† 27 Geo. III. c. 2.

inhabitants of New South Wales — are secure enough. What was never possessed, cannot be forfeited.

If common sense be not of itself convincing enough, e'en let us translate it into common law. In their day, the American Constitutions were legal ones: be it so. But *they* were by *charter: here* there is none. No charter either has ever yet been granted — or is in a way very soon to be applied for by *the* inhabitants, or any inhabitants of New South Wales. Yet has the colony been "*founded*" I suppose: — founded as Mr. Pitt and Mr. Rose found colonies. — *No charter, no colony.* In that one technical expression, are condensed the two substantial and rational grounds of nullity: no consent to subjection — no irrevocability of privilege.

All this while a sort of a colony there is — I am perfectly aware of it — that is, or has been supposed to be, capable of existing without charters, and in which the advisers of the crown have accordingly been used to find themselves pretty much at their ease. I mention it, to save gentlemen the trouble of catching at the shadow of an argument. It is the sort of colony that has been obtained by *conquest;* having surrendered, with or without capitulation; having or not having, at the treaty which confirmed the cession of it, a stipulation made in favour of it; having or not having, antecedently to its surrender, a constitution of its own. All or any of these varieties, might upon occasion afford considerable *amusement* to any learned gentleman, who, along with his brief, should have acquired a taste for the natural history of the law of colonies. But, as to any *practical use* for them, happily in the case of New South Wales there is none. To the host of follies included in the circumstance of distant *possession*, this colony at least, with all its peculiarities and all its faults, has not added that vulgar and crowning folly of distant *conquest.* It is needless to enquire, what on this occasion might have been the virtue of a string of *wampum:* no wampum, nor any substitute for wampum, has either been received or given in New South Wales. When, from their immense continental island, *Benillong* and *Yem-mer-ra-wannie** did us the honour to bestow a glance upon this our little one, it was in the character of private gentlemen, travelling for their amusement, or at least for our's: they signed no *treaty* with his Majesty, nor brought with them any diplomatic powers.

The flaw is an incurable one: if it were not, it would be none. No charter ever could, can now, or ever can be granted. It is not a case for charters: all the wax — all the parchment in the king's stationary office — all the law on all his woolsacks — would not make one. A charter, make it of what or how you will, must have somebody to *accept* it. But a charter — a thing to keep men in New South Wales —— Who is there, or who ever can there be, to accept it in New South Wales? A charter to empower a free man to lead a life of slavery, and to be flogged as often as he endeavours to escape from it! †

Instructions and counter instructions — insinuations and counter insinuations — instructions in form and instructions not in form; — despotism acting there *by* instructions, and *without* instructions, and *against* instructions; — all these things there may be, and will be, in abundance. But of *charters* — unless *such instructions* be called charters; — of *constitutions* — that anybody that can help it will be governed by; — of any *lawful warrants*, unless from Parliament; — from the present day to the day of judgment there will be none.

No, most assuredly; no parchment, no wax, no cement is there whatever, that can patch the no-constitution of it together for a moment longer, or prevent the improved colony from being converted, any day in the year, into a still worse chaos than it is. No plaster of any kind can be laid on upon this universal sore, by any other than the all-healing hand of Parliament.

If this view of the law be not just, and if the penners of the New South Wales act were not themselves sensible of its being so, wherefore apply to parliament for powers, for the organization of a judicial establishment in that colony? Judicial power is in its nature inferior, subordinate to legislative. If the crown had an original right to create the superior power, how can it have been without the right of creating the subordinate? If, by the American charters, the king creates legislative powers, by the same charters he creates powers of judicature; or what comes to the same thing, confers authority for the creation of such powers.

This argument, it must be acknowledged, supposes something like consistency on the part of the penners of the act; and of consistency what traces in it are to be found?

SECTION VII.

NULLITY OF GOVERNOR'S ORDINANCES. FOR WANT OF A COURT TO TRY OFFENCES AGAINST THEM.

ONE imagination more, for a last effort. With or without a declaration to that effect by the king's governor, the laws of England, (let it be said,) such as they exist at present, and such of them as are applicable to the state of things in the new colony, transport

* Collins, p. 251.

† Letter I. to Lord Pelham, p. 193.

themselves in one great mass into New South Wales. After them, transport themselves, as they came out, all subsequently manufactured masses of law, common as well as statute, such of them as are so applicable, and in as far as they are so applicable, each in an air balloon of its own making, without any body to send them out, or make it possible for them to be known when they are arrived. Moreover, along with the first great mass, transports itself in like manner the *right of establishing courts of justice* for the trial of all offences against all such masses of *English-made law*, present and future, *as they come in;* under the single condition, that the mode of procedure in such courts, in each sort of case, shall not be different from the mode of procedure in the same sort of case pursued in England. Why these conditions? — for this reason. The circumstance that rendered the authority of parliament necessary for the legalization of the sort of court which it has actually been employed in legalizing, is — that *that* court not calling in the assistance of a jury, though the cases are jury cases, the mode of proceeding under it is not according to the law of England. Being, therefore, the sort of court which the king's agent with all his powers had not quite power enough to make, thence came the necessity of sending it out, *ready-made* by the king, in pursuance of powers obtained from Parliament for the making it.

Unfounded this, a great part of it at least, in principle or in fact. But even if all the dreams in it were truths, the government of New South Wales would not, in point of legality, be one jot the better for them. These courts, made after the English pattern, serve for the trial of offences against English-made laws: — allowed; but the offences, for the trial of which proper courts are wanted, are *not* offences against *English-made* laws. By what courts, then, in New South Wales are these *non-English* offences to be tried? Not by these supposed *New South Wales made* courts, since, by the supposition, it is only for the trial of *English-made* offences that they can be made to serve. Not by the grand court, the establishment of which was the sole business of the statute: for it is to the trial of *English-made* offences that *that* court, by the express words of the statute, stands confined: — the court, when "convened," is to be "for the trial and punishment of all such outrages and misbehaviours, as, if committed *within this realm*, would be deemed and taken, according to the laws of *this realm*, to be treason or misprision thereof, felony or misdemeanour;" — not *all* "outrages and misbehaviours" *without exception*, but such alone as would be "misdemeanours" and so forth, "if committed within *this realm*."

The governor (suppose) issues an ordinance (such as, it will be seen, he has issued in abundance,) prohibiting an act, which would *not* have been either "misdemeanour" or "misbehaviour," "if committed within this realm."* Admit then, that it is really in the power of the crown to communicate to the governor, in his individual capacity (the power he has so often exercised,) the complete power of legislation. Power of *legislation* alone being thus communicated to him, power of *judicature* (except in the case of acts that would be offences "if committed in this realm,") not

* Obliged to copy from the act the words, "*this realm*," it is impossible to avoid noticing, to what a degree even the scanty scrap of power undertaken to be created by it, is torn in tatters by these two words: — a proof how little of the mind of the legislature was bestowed upon this business, and how slight any inference that can be drawn from what was *actually* done by it, to what was *intended* or in *contemplation* to be done. "*This realm*" — what realm? against the law of what realm must an act be an offence, triable under the court so constituted? Against the law of England? of Scotland? or of Great Britain, *i. e.* of both together? — If an act, being an offence — not against any law passed since the Union, but only against the law of England, as it stood before the Union; — if such an act be an offence triable in this court, so must an act which, though *not* an offence against the *English* law, *is* an offence against the *Scottish* law. To *point out* the confusion, is the only thing to the present purpose: to attempt to *clear it up* would take a volume.

Injuries purely *civil*, might, for aught I know, be "*misbehaviours*," but are they "*misdemeanours?*" I mean in the legal sense of the word, according to the law of *England*. Take for example acts purely negative. *Non-payment of debts:* non-performance of contracts, &c. &c. Blackstone, at least, is as decided as possible in the *negative*. [B. IV. ch. 1.] And how stands this matter under the law of *Scotland?*

England, I take for granted — England alone — was looked to as the standard of everything that was to be done: into Scotland, not so much as the mind of our legislators had ever travelled.

Offences, involving, in the description of them, denominations *common* or *proper* — names of *places*, *persons*, and *things* — things *real*, things *incorporeal*, *i. e.* fictitious — such as *offices*, &c. &c., may not improbably be found to be incommissible (*i. e.* acts, though of like tendency, may not be *offences*, or not *punishable*) in territories where such *places*, *persons*, *things*, &c. are not to be found. Even in England, Burn speaks of English laws rendered in this way inexecutable: — instancing those "which appoint an offender to be whipped by the *common hangman* — where perhaps there is no such officer." [*Burn's Justice, Conclusion.*] Instances are innumerable: I give this as most likely to be familiar. Offences punishable in England by an *ecclesiastical court* only — are they "*misdemeanours*" in New South Wales?

Points like these might be started, enough to fill a volume: all unresolved, and many unresolvable. The whole act is but a vast mine of nullities and *jeofails*. Found a colony out of an act like this? Build a house as well out of a load or two of brick-bats.

being given to him or anybody, what would he be the better for it? He has power to *create* the offence, but neither he nor anybody else has any power to *punish* or *try* the offender for it, when committed. The governor, by his *proclamations*, has power to *enact new laws*. Be it so. But has he likewise powers to create *Star Chambers* — to punish such as shall fail of obeying those proclamations? Where is the court to try any such offence? The court created under the statute? By the statute itself it stands precluded (as hath just been seen) from meddling with them. A court of King's Bench, or any other court to be erected by the governor under his *instructions?* — those instructions which are to be to *this* colony, what *charters* have been to all *other* colonies? Nor that neither. Power or no power — instructions or no instructions — thus much seems clear enough — that, down to the time of Mr. Collins's quitting the colony in September 1796, no such court (no court other than what has been called there a *civil court*, in addition to the court for the erection of which special power is given by the statutes) had ever in fact been holden. A court to be composed of the governor alone, for the trying of offences created by the governor alone? If so, here then we have the very quintessence of despotism; too rank, one should have thought, even for the meridian of New South Wales. It is Star-chamber out Star-chamberized: legislature and judicature confounded and lodged together, both in one and the same hand.

Is it true, then, that even such a court — a court thus arbitrary — might have been created, and that without any powers from Parliament? If so, then (as far at least as "misdemeanours" are concerned,) there was no need of Parliament, for the establishment of the *less* arbitrary sort of court, therein established and described: — a court composed of "the judge-advocate . . . . . together with six officers of his Majesty's forces by sea or land;" the governor not sitting among them indeed; though, being the person to "convene" the court, he possesses (as it was evidently intended he should possess) the power of choosing, on each occasion, such members for it, as, on that occasion, he thinks, himself most sure of. The conclusion is then — that in spite of all suppositions, whatever ordinances he enacts and executes, are on a double ground illegal: first, because there is no law for enacting them; and again, because there is no law for executing them.

So much for *law*. In *fact*, in what set of cases the governor makes use of this court, and in what cases he does without it, or whether any precise line is drawn between them, is more than on the face of the documents (I mean the judge-advocate's printed journal) I should expect to be able to pronounce. As far as I have yet seen, I should suppose no certain line: but, in each individual case, if it seems of importance enough, the court is convened: if not, whatever be the offence — English made, or colony made — the governor does what he pleases with it, without troubling anybody else, unless it be the man who is to give the lashes, or to "*pull the house down*,"* &c. as the case may be.

SECTION VIII.

KING'S LAW-SERVANTS NOT INFALLIBLE.

BUT, (says somebody) do you consider, Sir, by what authority all these acts, thus charged by you with illegality, were done? It is not the minister alone, and *his* subordinates, that are implicated. This is not mere *treasury* business. The acts have not only the *king's* name and signature to them, but the sanction of the whole *council-board*, with the opinions of this and that and t'other *great dignitary of the law* included in it.

My answer is — all this makes little difference. It goes no farther than to show, that, as for a certainty a surprise was put upon *parliament*, so probably enough a surprise was also put upon the *council-board:* upon the council-board, including the legal learning and legal authority belonging to it. On putting the dry question of law—"Has not the crown, without special powers from parliament, powers to organize a constitution for a new colony?" the answer, judging from the supposed precedents of the American colonies, may, not very improbably, have been in the affirmative: — especially if given on slight consideration, as it naturally enough might be, in a case where no opposition was apprehended.

But, surprise or no surprise, God be thanked, it is not in the power of the king's counsellors† to inflict upon a single Briton an atom of punishment of their own creation, much less to inflict illegal punishment upon Britons by thousands, and to make *ex post facto* penal laws by dozens, in repugnancy to so many laws of parliament, including *Magna Charta* and the *Bill of Rights*. Let the sanctions lent to the measures be what they may — by whatever *pretences* — and from whatever *names* obtained—wholesale oppression was the object of it, wholesale oppression has been the result.

* Collins, II.

† I mean *legal* power, and under the constitution, while it stands: If indeed it falls, and despotism rises in the place of it, then indeed such power as that in question exists at any time, without difficulty: and *è converso*, if such power exists, the constitution is at an end, and despotism stands in the place of it.

What *does* appear in point of fact, and from very high authority, is — that in matters of colonial legislation, there has been a time, and even since the accession of his present Majesty—when his Majesty's law-advisers in this behalf have not been altogether masters of this part of their business: so at least, in the court of *King's Bench*, in the famous *Granada* case — the great and only adjudged case since the foundation of the first colony, that has any bearing upon this point — *(Lord Mansfield* being spokesman) — was the opinion of the judges.* "The inattention of the *king's servants*" (speaking of his Majesty's law-servants) is the circumstance to which, as the sole cause, the dispute then on the carpet is ascribed by that discerning judge. The power of legislation, as exercised in that colony, in the way of *taxation*, on the 20th of July 1764, by the king alone, without the concurrence of any other authority — either that of parliament *here*, or that of an assembly of the colony *there* — exercised on the ground of its being a CONQUERED colony — is there supposed, though but *arguendo*, to have been in itself indisputable. But, before that day, to wit, on the 7th October 1763, these his Majesty's careless servants, not knowing, or not minding what they were about, had so managed as to divest him of it: and it was after having so done, that, forgetting what they had done, they picked it up again, and in the name of their royal masters exercised it as above: "inverting," says Lord Mansfield, "the order in which the instruments should have passed, *and been notoriously published*, the last act" was, under their management, "contradictory to, and in violation of the first:" and this is the "inattention" spoken of. Here, then, was an occasion on which, according to Lord Mansfield and the rest of the judges in the King's Bench, his Majesty's law-servants did not know what they were about: and this occasion was — the same as that now in question — that of the making or mending a constitution for a colony. This was in 1763 and 1764: and, forasmuch as a mistake of this sort was actually made, and by his Majesty's law-advisers, I think I may venture, from the demonstrated error of that prior time, to infer the possibility of an error on the like subject, on the part of the same description of persons, in 1786 and 1787. The arguments *ab auctoritate* and *ab impossibili* being thus cleared away, the other arguments may without much rashness be trusted to their own strength.

* Campbell, *v.* Hall, Cowper's Reports 1783.

SECTION IX.

NULLITY OF NEW SOUTH WALES LEGISLATION, PROVED BY THE GRANADA CASE.

IF any addition could be wanting, to the proof already given, of the illegality of the legislative power exercised by the sole authority of the crown in this colony, it might be drawn, and with full assurance, from this *Granada* case.

From the whole tenor of the argument of the court, as delivered by *Lord Mansfield*, and taken in short-hand by the reporter in that case, two propositions may be deduced with full assurance:—

1. That in no case had any *judicial decision* been given, down to that time (1774,) recognizing the right of the *crown* to legislate, *without parliament*, over an English colony, howsoever acquired, (whether *by* conquest, as *Granada* was, or *without* conquest:) that therefore, as to every point not necessarily comprised in the decision given in that Granada case, the question, so far as concerns *judicial decision*, in contradistinction to *extra-judicial opinion*, remained open to that day; and from thence, it may be added, to the present. The above-mentioned decision in the *St. Alban's* case — the decision disaffirming the king's right to legislate over Englishmen without parliament — has therefore nothing to contradict it.

2. That, although by that argument, in the case of the *foreign* inhabitants of a country acquired by *conquest*, the right in question is *affirmed:* yet, in that same argument, in the case of a colony acquired in any *other* way than by conquest, it is expressly *disaffirmed;* and in particular, it is disaffirmed in the case of all the several other colonies at that time in existence.

3. On *one* condition indeed, it is, in the non-judicial opinion relied on by that same argument, *in a certain way*, affirmed: and the condition is — that, as in those other colonies, a share be taken by an *assembly* of the colony in the exercise of the right. But, by the affirmance of the right, restrained as it is by this condition, the case of Mr. Pitt, in *his* exercise of it, will not be bettered. For, of any legislative *assembly* in the penal colony of *New South Wales*, there has never been so much as a shadow.

Nor, even thus, is the affirmance given to the right a distinct and *positive* one. It is only not disaffirmed, because not disputed; both parties (the crown and the local assembly) being alike engaged by their respective views and interests to assume it. These propositions, being of such importance, may seem to have a claim to very specific proof: such proof shall not be wanting.

Of all these propositions proof will be af-

forded at the same time, by the two only authorities stated as having any bearing upon the case. These are —

1. A *dictum* in 1608 by Lord Coke, Chief-Justice, in his report of the famous case called *Calvin's case:* the case in which, on the accession of James the First, a right on the part of *Scotchmen* to certain privileges of *Englishmen*, was claimed and allowed. 2. A *non-judicial* opinion, given in 1702 by two practising lawyers — one of them at least at that time a servant of the crown — *Sir Philip Yorke* (afterwards Earl of Hardwicke) and *Sir Clement Wearg*, on a question relative to the right of the crown *to tax Jamaica:* an opinion which, so far as it went to the affirmance of the right, in the case of a colony obtained by *conquest*, appears to have had for its ground, and only ground, that same ante-colonial *dictum* thrown out in Calvin's case.

As to what is said in Calvin's case, not applying (if to any colony) to any other than a colony acquired by *conquest* (such as New South Wales, most certainly, is not,) to scrutinize into it is a task that may here be spared.

The proposition is a mere *dictum: collateral*, and not even very perceptibly relevant, to the case in hand, the words of it, when extracted and wiped clean, as it has been very carefully by Lord Mansfield, from the portentous mass of absurdity and atrocity with which he found it entangled,* are as follows: — "If a king comes to a kingdom by *conquest*, he may change and alter the laws of that kingdom: but if he comes to it by title and [of] *descent*, he cannot change the laws of himself, without the consent of parliament."

Of the opinion given by Yorke and Wearg, the account given by Lord Mansfield is in these words: —

"In the year 1722, the assembly of *Jamaica* being refractory, it was referred to Sir Philip Yorke and Sir Clement Wearg, to know what could be done, if the assembly should obstinately continue to withhold all the usual supplies. They reported thus: — 'If *Jamaica* was still to be considered as a *conquered island*, the *king* had a *right to levy* taxes on the inhabitants: but if it was to be considered in the *same light* as *the other colonies*, no tax could be imposed on the inhabitants, but by an *assembly of the island*, or by an act of *parliament*.'

"They considered the distinction in law as clear, and an indisputable consequence of the island's being in the one state or the other."

"In *the* one state," says Lord Mansfield, "or *the* other." Neither did he, therefore, any more than those whose opinions he was adopting, know of any *third* state. They recognized not any such state, as that of a colony acquired otherwise than by conquest, and yet capable of being legislated upon by the crown alone — by the crown, without any further sanction, either that of a local assembly, or that of the supreme legislative body in the mother country — without any check at all upon absolute autocratic power — without the necessity of any consent, either on the part of any special deputies from that particular division of his Majesty's subjects, or on the part of the representatives of the whole.

In the case which drew this argument from Lord Mansfield, the point he was bound to determine, and which he accordingly did determine, was—that, *as matters stood*, the power of taxation, as exercised by the crown in Granada, *was not* legal. Another point which, being at liberty to speak to it or not, he thought fit to speak to was, that *if matters had been otherwise*, such power *would have been* legal. If, in humble imitation of such high and sincerely respected authority, and in precisely the same view, viz. that of seeing important constitutional questions settled on the broadest and most solid grounds, it may be allowable for an obscure ex-lawyer, on this same ground, *to travel*, as the phrase is, *a little way out of the record*, I will venture to state it as a question, which, notwithstanding the opinion so distinctly given by that great lawyer in the affirmative, remains still quite open, whether, even in the case of *conquest*, in any colony acquired since the Revolution, *Trinidad* for example, the right of the king to legislate without parliament—I mean, without express authority from parliament — would, *in case of dispute*, be found maintainable in law?

Over *Englishmen*, it stands expressly negatived (as already mentioned) by *Magna Charta*, and by the interpretation put upon that statute, by the judicial decision given in the *St. Alban's* case.

Over *foreigners*, inhabitants found existing in a colony acquired by conquest, it would (I am much inclined to think) be regarded as negatived, as well as over *Englishmen*, by the two connected constitutional principles, recognised in the 4th and 5th articles of the *Bill of Rights:* viz. that neither *in actu* nor *in potentia*, shall a king of England have, *as such*, without the express allowance of parliament, either a separate army of his own, or a separate purse. And in this light, it appears from *Edmund Burke*,† that the Bill

* Pronouncing the laws of every infidel (*i. e.* non-christian) country void in the lump, and so forth: Turkey, Hindostan, and China, for example. Whenever the khan of the Tartars sounded his trumpet after eating his dinner, it was to allow other princes to eat theirs. When this christian barbarian thus sounded his trumpet, it was to prohibit other potentates from eating their dinners: at least from eating them in peace and quietness. All infidels (he says) are perpetual enemies.

† Speech upon American taxation, 19th April 1774; 3d edition, 1775, p. 54.

of Rights was most publicly (viz. in the House of Commons) and constantly, and, for anything that appears, without contradiction, considered by *George Grenville*, himself a *lawyer*—(according to Burke, even too much of a lawyer)—before he was a *minister*, and this not on the ground of *policy* merely, but of actual *law*.

Be this as it may, what is certain is—that the question is still open, notwithstanding the decision in the *Granada* case; because in that case, though an opinion was given, affirming the right of the crown to legislate in case of conquest, that opinion was not necessary to the decision then pronounced.

How much better for this country, as well as so many other countries, would it have been, if instead of fishing for drops of sense out of the extrajudicial ravings of Lord Coke, men of law had attended, on the one hand, to the direct decision of the judicial authority, as reported, in sober though very energetic language, by the *same* God of their idolatry, in the St. Alban's case; on the other hand, to that of the legislative authority, as displaying itself in the *Bill of Rights!* If they had, nothing in the way of legislation would, from first to last, have been done in English-America, but *by* parliament, or with *express* authority from parliament. It would not then have been so much as dreamt of, that it was in the power of the king, by confederating with a part of his subjects, withdrawing themselves for this purpose to a vacant territory remote from the eye of parliament—that it was in the power of his law-servants, by any such management, to oust parliament of its rights: I mean its exclusive right of legislation, as established in the St. Alban's case. Dissension would then have been nipped in the bud; and the American war, with all its miseries, and all its waste of blood and treasure on all sides, would have been saved.

Unfortunately, in the St. Alban's case, the scene not lying in America, nor any thought being entertained by anybody about America, no such word as *America* is to be found. Of *colonies*, as little: for at that time scarce had any such idea as that of *colonization* ever presented itself to any English mind. And thus it happened, that when America came to be the order of the day with lawyers, nothing appeared in their common-place books, to guide them to that case.

What is curious enough, is—that in the very first instance of a grant of land made by a charter from the crown of England to intended settlers in America, these portions of *American ground* were declared to be put upon the same footing in point of law, as if contained within a spot of *English ground;*—the manor of *East Greenwich.** And with the St. Alban's case, then comparatively a recent one, before their eyes—with this case, one of the most prominent cases, in the most prominent of all law books, full in their teeth, were these crown-lawyers audacious enough to make their king grant, to these inhabitants of *East Greenwich*, privileges which had already been declared illegal, not fourteen years before, when granted to the inhabitants of *St. Alban's*. But the grant was of the number of those exertions of prerogative, which were not expected to come before an English court of justice, any more than they were intended for the eye of parliament. Parliament, never for two days together sure of its own existence, had too much of its own and the whole nation's business upon its hands, to be inquisitive about a handful of obscure adventurers, who, turning their backs upon their country, betook themselves to other laws.†

All this, except what concerns the want of power, on the part of the servants of the crown here in England, to legislate over Englishmen in New South Wales, and without any of those limitations, without which, or some of them, no such power had ever been exercised by any servant of the crown of England anywhere else, is, as I have already observed and acknowledged, a mere work of supererogation, with reference to New South Wales. But there are other places, with reference to which it may be not altogether so immaterial:—say *Trinidad* for example.

Mischievous as the effect of these questions might be, if ill-timed, I start them without any sort of scruple. Parliament being now sitting, the tendency as well as the object of them is, not to create confusion, but

* 'All the lands within the precincts of the colonies (viz. between 34 and 45 degrees of latitude) were on petition to be granted by the king,' "to be holden of the king, as of his manor of East Greenwich, in Kent, in free and common soccage only, and not in capite." *Lind*, Remarks on the Acts relating to the Colonies, p. 94.

† Another example may help to show the force and virtue of such exercises of regal power, in the character of *precedents*. On the 23d of March 1609, about three years after the first charter, a second is granted to the same company, with additional powers. Among these is a power to any two of the council of the company resident in England, *to send out of England*—to send out to their colony—"there to be proceeded against and punished, as the governor, deputy, or council there shall think meet"—any persons who, after engaging in the service of the company, and having received earnest-money, shall either have refused to go out thither, or have returned from thence.[a]

What cared these men (I mean the crown-lawyers who drew this charter) about the *St. Alban's* case, and the court of judicature that decided it? As little as about *Magna Charta* which it expounded: as little as their successors, who drew the *New South Wales Act* for Mr. Pitt.

[a] Lind. Part II. § 1, p. 100.

to prevent it. How desirable, on every account, that rights of such importance should be fixed at once upon the rock of *legislation*, instead of being left to totter upon the quicksands of expected judicature, waiting for "the competition of opposite analogies!"* Can it be worth while to leave so much property a prey to insecurity—so many confident expectations a prey to disappointment—for the chance of saving a little longer the stump of a rotten prerogative, and perhaps the pride of a few lawyers?

But, all collateral questions dismissed, thus, on the ground of law, stands the government of New South Wales. Over Britons or Irishmen, in or out of Great Britain and Ireland, the king, not being himself possessed of legislative power, can *confer* none. To confer it on others—those others being his instruments, placeable and displaceable by himself at any time, is exactly the same thing as to possess and exercise it himself.

The displaceable instruments of the crown—the successive governors of New South Wales—have, for these fourteen years past, been exercising legislative power without any authority from parliament: and either without any authority at all from anybody, or at most without any authority but from the king: and all along they have been, as it was most fit they should be, placed and displaced at his Majesty's pleasure.

And among those, over whom legislative power has thus been exercised, have been individuals by hundreds, or, ere this, by thousands, who, so far from subjecting themselves to this power by their own *consent*, or having been subjected to it by any consent on the part of their *ancestors*, under whom they were born and bred, have all along been doing their utmost to make their *escape* out of the reach of it: and this very absence of consent—the very energy and notoriety of their repugnance—is among the very grounds on which, in the most important case of all, that of confining to this land of bondage such as are free by law, the power thus exercised over them would, if at all, be justified.

Of two things, one. Either there is not at this moment any legal power of legislation in *New South Wales*, or there is not any legal power of legislation in *Great Britain*—*Magna Charta* is waste paper. If, without fresh support from parliament, the constitution of New South Wales stands, that of Great Britain and Ireland is no more. If, without authority from parliament, the king can legislate over Britons and Irishmen in New South Wales, so can he in Great Britain and Ireland. If, without authority from parliament, the king can confine to that place of exile any such quondam bondsmen, reconstituted freemen by the expiration of their legal terms of bondage, so likewise can he deal by freemen who never were in bondage. If men of either description can be thus confined *when there*, with equal right may they be *sent there*. The King is absolute: and, instead of convening Lords and Commons to Westminster Hall to join with him in making laws, may send them to have laws made upon them in New South Wales.

* Paley.

SECTION X.

GOVERNOR'S ILLEGAL ORDINANCES EXEMPLIFIED.

1. *For Prevention of Famine.*

THUS, then, stands legislation there in point of *right*. In point of *fact*, I have already observed, there has not been any deficiency of it; or, if there has, it has not had the deficiency in point of law, or any suspicion of such deficiency, for its cause. *Ten* classes, comprising the whole population of the colony, have already been brought to view: half of them, or thereabouts, subject by law, in one way or other, to a certain degree at least (for aught appears,) to the governor's legislative power: the other half, *not* thus subject to it. No traces of any such distinction, in point of *right*, appear in point of *fact*. *Regardless*, or (to embrace the more probable, as well as more candid supposition) *unapprized* of any such distinctions, he legislated *chance-medley* upon all. The terms of each ordinance or mandate being general—addressed to all alike—no exception of this or that denomination of persons—neither *exception* nor *specification* (which is as much as to say an exception of all denominations not specified)—obedience appears to have been expected and exacted from all alike. *De jure*, a limited monarch (though most strangely limited)—*de facto*, he was an absolute one: as, indeed, in the situation in which he, and everybody under him, had been so unnecessarily placed, it was sometimes at least, if not always, necessary that he should be.

To satisfy the reader at one and the same view, that of legislation there was little or no *want* in *one* sense, and at the same time a most urgent and perpetual want in the *other*—that there was *plenty* of legislation, accompanied all along by a most urgent *need* of it—here follows a list of the chief *objects* or *purposes*, which the ordinances actually issued appear to have had in view. To class a set of laws under the very heads which point out the *reasons* of them—such, if not a very ordinary mode of classification, is neither an uninstructive, nor surely an unfair one.

In the journal of the late judge-advocate of the colony, indications more or less distinct

may be found, of a set of ordinances, of one sort or other — in number between sixty and seventy — issued within a period commencing with the arrival of the first expedition on the 20th of January 1788, and ending with the month of September 1796; a period of not quite nine years.

Among the *objects* or *final causes* of these regulations, the following appear to have been the principal ones: —

1. Security against *scarcity* and *famine.*
2. Security against *depredation*, and other mischief from within.
3. Security against mischiefs from without, viz. against injuries from the *native savages.*
4. Security against accidents by *fire.*
5. Prevention of *drunkenness.*
6. Enforcement of attendance on *divine worship.*
7. Prevention of *emigration*—whether on the part of *non-expirees* — of *expirees* — or *both* together without distinction.

These objects—were they of no moment? The mischiefs thus guarded against—was there anything singular or unexampled in them ?— anything which, to a man of ordinary forecast, legislating in England could be expected to be invisible ?

Without entering into particular examinations, thus much may be averred in general terms without error — that among these ordinances are many either altogether indispensable, or indisputably useful: speaking all along of such as, being introductory of *new law*, adapted to the particular exigencies of the spot, became *creative* of so many correspondent *offences*, such as would *not* be "*misdemeanours or felonies, treasons or misprision thereof,*" *if committed in* "*this realm;*"* to use the words employed by the act, in the description of the only offences, which the only court of justice legalized by it, received authority from it to punish.

In every instance, the stronger the necessity of each illegal ordinance, the clearer the innocence of the *local* lawgiver, if not in a *legal* point of view, at least in every other: but the more clear *his* innocence, the more flagrant the guilt of those who, sitting in the bosom of security, sent him out thus to legislate with a halter about his neck, and without legal powers! Guilty, if in their dreams they thus exposed him: how much more so if awake!

From the sort of account given of these several ordinances by the judge-advocate (an account which had no such scrutiny as this for its object,) to speak with decision, and at the same time with correctness, as to the legality of the ordinance, is not in every instance possible. In many, perhaps most instances, one and the same ordinance will have been in part illegal, in part legal: legal, in so far as it bears upon the faculties, active or even passive, of persons belonging to the classes above distinguished as legally subjected to the authority of the governor; illegal, in as far as it bears in like manner upon persons *not* so subjected.

For showing, by the tenor of the ordinances themselves, the urgency of the demand for legal authority for the issuing of them, and thence the guilt of those by whom it was left unsupplied, I select, out of the above seven cases, the three most prominent ones: *famine*, *drunkenness*, and *escape.*

The *absence*, coupled with the *need*, of any of the powers of government — this combination, as far as it extends, is *anarchy.* Famine and anarchy are the grand intestine foes, which all *infant* settlements have to struggle with. Each leads on and exasperates the other. From one or other, or both, many expeditions of this sort have suffered more or less severely: some have perished altogether. Such has been the case where the spot has been comparatively at next door to the source of power and supply: in *America* for example, at scarce a quarter of the distance. To any considerate eye, how much more repulsive the danger in *New South Wales!*

This double source of destruction *ought* to have been foreseen; and with an ordinary degree of intelligence and attention *would* have been foreseen: and being foreseen, should of itself have been sufficient to *prevent* the establishment — if not of *any* colony— at least of any colony *so composed.* In a country so situated and circumstanced — of itself yielding nothing in the way of sustenance, and at that unexampled distance from the nearest country that yielded anything — it was in the very nature of the enterprise, to deliver up the persons sent upon it, to the scourge of *famine:* it was in the very nature of the enterprise, to give birth to enormous exertions, in the way of national *expense*, in the view of protecting them against the affliction: it was in the very nature of the enterprise, that such exertions should be more or less *ineffectual.* Such was the *tendency* of it—such was the *event:* many sunk under the pressure: the remainder, for months together, stood between life and death. Death must evidently have been the general lot, had it not been for the exercise of those powers, of which the founders of the establishment *here at home* had left it destitute.

Such negligence, to give it the gentlest name, being too flagitious to be suspected, was not in that *Ultima Thulé* followed with those consequences, of which it *might* have

* In whatever sense the word *this realm* be understood. *Vide* supra, p. 264.

been productive, in a situation communicating more freely with the centre of information. Against anarchy, a battalion of well-armed soldiers, to keep in order a band of unarmed convicts—such a remedy, expensive as it is, must be allowed to be a *strong* one: continual as the apprehensions are, that it will not be strong enough.

EXAMPLES of Ordinances, having for their object security against *Scarcity* and *Famine*.

1. Page 23, *March* 1788. "Much damage . . . . by hogs — . . . . Orders given . . . . any *hog* caught trespassing, to be *killed* by the person who actually received any damage from it."

2. Page 28, *May* 1788.—"The governor . . . . directed every person in the settlement to make a *return* of what *live-stock* was in his possession —"

3. Page 98, *March* 1790.—"It being found that great quantities of stock were killed, an order was immediately given, to *prevent the farther destruction* of an article so essential in our present situation."

4. Page 101, 27*th March* 1790. — "Damage was received from the little stock which remained alive: the owners not having wherewithal to feed them, were obliged to turn them loose to browse . . . . It was however ordered, that the *stock* should be *kept up during the night*, and every *damage* that could be proved to have been received during that time was to be *made good* by the owners — . . . . or the animals . . . . *forfeited.*"—

5. Page 105, between the 3d and the 7th of *April* 1790. — "All *private boats* were to be *surrendered* to the public use." This was for fishing: a determination having been taken "to reduce still lower what was already too low" (the ration.) "In *this* exigency, the governor had thought it necessary to assemble all the officers of the settlement—civil and military—to determine on . . . . measures——"

6. Page 104, between the 3d and 7th of *April* 1790. — "The lieutenant-governor . . . . called a council of *all* the *naval* and *marine* officers in the settlement, when it was unanimously determined, that MARTIAL LAW should be proclaimed; that *all private stock*, poultry excepted, should be considered as the property of the state!"

Of the several acts of disobedience with reference to these respective ordinances, how many are there that would have been "*misdemeanours*," if committed in England?—Scarce a single one.

The ordinances all prudent and *expedient*:—upon the face of them, at any rate: some at least *necessary*; necessary to a degree of urgency to which even conception cannot reach in England. *Sanction*, the *physical*: *penalty of non-legislation*, not scarcity only, but *famine*.

SECTION XI.

GOVERNOR'S ILLEGAL ORDINANCES EXEMPLIFIED.

2. *For Prevention of Drunkenness.*

Improvidence — Indolence — Helplessness — all *extensive* as well as *intense*, to a degree scarce conceivable in this country, were the prominent features of this reformation colony, down to the time when its historiographer took his leave of it.* But of all these weaknesses, *drunkenness* was the principal and perennial source.†

Prevention—anything like *complete* prevention—being out of the question, to snatch from this vice what *could* be snatched from it of its prey, would be as important an object as it was a natural one, to a governor legislating on that spot. But *important* is not strong enough. In *this* country, *well-being* only; in that, even *being* was attached to it. Upon sobriety, depended labour: upon labour, the means of immediate subsistence. In that state of things, to legislate against *drunkenness* was to legislate against *famine*. The *means* chosen might be more or less apposite; the result more or less successful. But the *endeavour* was as necessary as *life* is necessary: and for this endeavour, the authority obtained from parliament was as insufficient as for all the others.

Here, as in the case of *famine*, the same natural incompatibility established between the *expedient* and the *lawful*: to the governor the same distressing option between *legal* duty and *moral*, supposing the difference to have been present to his view.

Among the ordinances actually issued by him on this ground, it will be only by accident, if any one be found, that was not *expedient*: it will be only by accident, if any one can be found, that was not illegal. As to the *test* of illegality, it is already given. To apply it to the several ordinances, article by article, would to lawyers be unnecessary, to non-lawyers tedious beyond endurance.

No. 1. Collins, I. p. 175: 28*th August* 1791. —"Spirituous liquors . . . . Ordered that none should be *landed*, until a *permit* had been granted by the judge-advocate: and the provost-marshal, his assistants, and two principals of the watch, were deputed to *seize* all spirituous liquors which might be landed."

No. 2, p. 300: *July* 1793. — "Spirituous liquors. Notice" (by the lieutenant-go-

* Letter I. to Lord Pelham, p. 175 to 177.
† Ib. p. 190 to 195.

vernor,) "that any person attempting to *sell* spirituous liquors without a *licence*, might rely on its being seized, *and the house of the offending parties pulled down*."

No. 3, p. 449: 18*th January* 1796. — "The governor forbade all persons .... to *distil* spirituous liquors .... on pain of *such steps being taken for their punishment as would effectually prevent a repetition of so dangerous an offence*." "In pursuance of these directions," pursues the text, "several *stills* were found and *destroyed*." Rather more of the mystery of despotism than of the certainty of law in the above *sanctionative* part: but, by the *practical comment*, the mystery was unravelled

The forbidden practice is spoken of as being "*in direct disobedience to his Majesty's commands*." Here then we have one instance at least, in which the name of Majesty was profaned, for the purpose of giving an apparent sanction to these violations of law, which were found better adapted to the purposes and dispositions of ministers, than the legal authority, which might or might *not* have been obtainable from parliament.

No. 4, p. 483.—"Direction by the governor .... that none of those persons who had obtained licences should presume to carry on a traffic with settlers or others who might have grain to dispose of, by *paying for such grain in spirits*." Then, in case of contravention, comes the menace in the established mysterious style: their licences would immediately be recalled, and *such steps taken for their punishment, as they might be thought to deserve*." Also that "*trading, to the extent which he found practised*, was strictly forbidden to *others*, as well as to those who had *licenced* public houses." Observations, in various shapes, present themselves: amongst others a question, how a man was to know whether he was safe or no under this law? But as to what may apply more particularly to individuals *there*, this is not a place for observations.

SECTION XII.

EXPIREES FORCIBLY DETAINED.

No. 1. Collins, I. p. 74: *July* 1789. — Liberty of departure, and freedom from bondage on the spot, both refused to a number of *expirees* at the same time; on the ground that no evidence of the original commencement and length of their respective terms was to be found.*

There being, for anything that appeared, no authority for treating them as convicts, the *legal* consequence would have been, in England, and in short under any system of of law but that of New South Wales, that they should have been treated as freemen. Instead of that, they were kept in confinement and bondage there, till a time which might never happen.

The omission of the papers in question is ascribed by the historian, as by a candid interpreter it naturally would be, to "oversight," and the oversight is spoken of as being "*unaccountable*." What is curious enough is, that this omission is not the only one of the same kind.† But, even though it were the only one, indications are not altogether wanting, such as might lead to a suspicion at least, as to the cause. In the list of convicts, with their respective terms and days of sentence, given by Governor Phillip,‡ *five* persons are named whose terms were to expire in the very month in question, July 1789. Of these there was not one whose remaining penal term, on the day of his being *shipped* for transportation, or at least on the day of the ship's sailing, was so long as two years and three months; nor, on the day of his *landing*, more than eighteen months. Deducting, if it be but six months, for the time requisite for return, had these convicts, all of them, had a vessel in readiness for them to embark in for England, and embarked and arrived accordingly, so as to have reached England by the end of their respective terms, there would have remained no more than a twelvemonth for them to have continued, according to their respective sentences, on the spot to which they were conveyed at so heavy an expense. Is it natural, that after remaining in confinement in England for near five years out of his seven, a man should have been sent out to the antipodes with a view of his not being kept there for more than a twelvemonth? If not, then the *non inventus*, upon

* Collins, I. p. 74: *July* 1789.—"Notwithstanding little more than two years had elapsed since our departure from England, several convicts about this time signified that the respective terms for which they had been transported had expired, and claimed to be restored to the privileges of free men. Unfortunately, by some unaccountable oversight, the papers necessary to ascertain these particulars had been left by the masters of the transports with their owners in England, instead of being brought out and deposited in the colony; and as, thus situated, it was equally impossible to admit or to deny the truth of their assertions, they were told to wait till accounts could be received from England; and in the meantime, by continuing to labour for the public, they would be entitled to share the public provisions in the store. This was by no means satisfactory; as it appeared they expected an assurance from the governor of receiving some gratuity, for employing their future time and labour for the benefit of the settlement."

† See Collins, II. 22, 131, 267, 331.

‡ Voyage, Appendix, p. lv.

the documents by which their freedom would have been established, may not appear altogether so unaccountable as without this comparison of circumstances it would naturally appear to be.

What is *certain*, from Governor Phillip's list, is — that certain persons, *five* in number, were in this predicament in this same month. What appears little less so is, that the persons claiming their liberty in that same month were those *same* persons: "*conscious in their own minds* that the sentence of the law had been fulfilled on them," are the terms employed on this occasion, in speaking of these same persons, by their ever-candid historian and judge.

What they *claimed* on this occasion was, in the first instance, *pay*, upon the footing of *freemen:* what was announced to them on this head was, that "by continuing to *labour for the public*, they would be entitled to share the public *provisions* in the store;" that is, be kept from starving, on condition of their being kept in *bondage*.*

The supposition of an intentional suppression anywhere, is, it is true, no more than a bare surmise: a suspicion, given as nothing more, and which, if unfounded, may be easily disproved. In the meantime, the probability of it will not be found diminished by Nos 6, 7, 8, 9, 10.

No. 2. Collins, I. 74. *July* 1789. — It was on this same occasion, that one of the claimants in question, having in presence of his Excellency "expressed himself disrespectfully of the lieutenant-governor, was . . . sentenced to receive 600 lashes, and to wear irons for . . . six months." What the *words* thus punished were, does not appear: but what does appear beyond doubt is — that if there had been no such violation of law on the one part, there would have been no such violation of respect on the other.

No. 3, p. 159. *April* 1791. — Information given by the governor to the convicts, "that none would be permitted to quit the colony who had wives and children, incapable of maintaining themselves, and *likely to become burthensome* to the settlement, until they had found *sufficient security* for the maintenance of such wives or children, as long *as they might continue after them.*" Considering the latitude of the discretion assumed by some of these terms, this notice may be considered as a pretty effectual embargo upon the whole married part of the community of *expirees.*

No. 4, p. 169. *July* 1791. — Information given by the governor to the *expirees*, that those who wished *not* to become settlers in New South Wales were "*to labour for their provisions, stipulating to work for twelve or eighteen months certain;*" and that afterwards, on condition of their entering into such engagement (is not that the meaning?) "*no obstacles would be thrown in the way of their return to England;*" but that, as to "*assistance*" for any such purpose, nobody was to *expect* it.† Illegal *detention*, for twelve or eighteen months, nobody was to know which, which is called "*certain;*" and this at any rate *universal:* — illegal *bondage*, for the same uncertain certainty, and equally universal. And at the end of this certainty, what was to be their fate? As to the means of departure, they were to get away if they could, but they were to have no "assistance:" as to their condition so long as they *staid* (that is, as to the greater part of them, so long as they *lived,*) they were to be either bond or free, as it might happen: nobody was to know anything about the matter. Such is legislation in the *antipodes:* such is legislation by the servants of the crown: such is legislation without parliament.

No. 5, p. 190. 3*d December* 1791. — Sailed the Active and Albemarle for *India*. After their departure, *expirees* were missing. "Previous to their sailing, the governor was aware of an intention, on the part of the seamen, to facilitate such their departure. He thereupon instructed the master to deliver any persons whom he might discover to be on board, *with-*

* Quere, At what *time*, and by what *means*, and by *whom*, were these facts ascertained *at last*, for the purpose of their insertion in the above-mentioned printed list. In the printed voyage, the date on the title-page is 1789: the date in the dedication is the 25th of November in that year. Among the materials of which the publication is composed, all the *other* articles at least were transmitted *from* New South Wales. If it was from New South Wales that *this* document was transmitted with the rest, the time of its being sent from thence must have been considerably *anterior* to the time in question. On this supposition, they must actually have been in New South Wales, at the very time when "it was found that they were left by the masters of the transports with their owners in England" Collins, I. 74.

† I cannot take upon myself to affirm with absolute certainty, whether the sense, in which the passage presented itself to me, be in all parts correct. To keep clear of misrepresentation, I here transcribe it at full length —

"The convicts, whose terms of transportation had expired, were now collected, and by the authority of the governor informed, that such of them as wished to become settlers in this country should receive every encouragement; that those who did not, were to labour for their provisions, stipulating to work for twelve to eighteen months certain; and that in the way of such as preferred returning to England no obstacles would be thrown, provided they could procure passages from the masters of such ships as might arrive; but that they were not to expect any assistance on the part of government to that end. The wish to return to their friends appeared to be the prevailing idea, a few only giving in their names as *settlers*, and none engaging to work for a certain time." Collins, I. 169.

out permission to quit the colony, as prisoners, to the commanding officer of the first British settlement they should touch at in India."

No. 6, p. 230. *August* 1792. — "Such [expirees] as should be desirous of returning to England were informed, that no obstacle would be thrown in *their* way, *they* being" (*i. e.* all of them being) "at liberty to ship themselves on board of such vessel as would give them a passage." Such was the intention *announced.* What was the intention at that same time *entertained?* The following words explain it: — *Now* it was that "it was understood that a clause was to be inserted, in all future *contracts* for shipping for this country, subjecting the masters to certain penalties, on certificates being received of their having brought away any convicts *or other persons* from the settlement without the governor's permission: and, as it was not probable that many of them would, on their return, refrain from the vices or avoid the society of those companions who had been the causes of their transportation to this country, *not many could hope* to obtain the sanction of the governor for their return."— Not "*obtain*" it? Agreed. But — not so much as "*hope*" to obtain it? not even at the very time when it was expressly promised to them? — a promise made to *all;* and this at the very time when it was determined that, a few only excepted, none should ever receive the benefit of it!

No. 7, p. 268. 19*th February* 1792. — *Intention executed.* Howsoever it may have been as between the intention *announced* and the intention entertained, between the intention entertained and the execution that ensued there was no repugnance. On this day sailed for Canton the Bellona. Into this ship had been received *six* persons from the settlement: *two* of them, *expirees, by* permission; *two* others, *expirees* also, but *without* permission; the remaining *two, non-expirees.* Of the *four* latter it is stated, that they had been "secreted;" also that they were "discovered," "the ship being smoked." That they were accordingly re-landed at least, if not otherwise punished, may pretty safely be concluded, though not expressly mentioned.

Of the two *non-expirees* it is stated, that "they had not yet served the *full* period of their sentences." From this it seems not unreasonable to conclude that this full period would have arrived before their arrival in Great Britain. If so, then neither by their *arrival*, any more than by their *departure*, would they have gone beyond the exercise of their renovated rights.

No. 8, p. 268. 15*th February* 1793.—At this time the expectation "about the clause . . . . in the charter party, for preventing shipmasters from receiving any person . . . . from the colony, without the express consent and order of the governor," was found to be realized. The Bellona came provided with this clause. She had sailed from England on the 8th of August 1792.

No. 9, p. 283. 24*th April* 1793.—*Intention executed a second time.* Sailed the Shah Hormuzear and Chesterfield. "But few convicts [expirees] were *allowed* to quit the colony in these ships." On a subsequent occasion, in November 1794, the number received on board the same number of ships (the Endeavour and the Fancy) had been *near* a hundred: whereof by permission, 50; without permission near 50 more. Ib. p. 398.

No. 10, p. 316. 2*d October* 1793.—*Intention executed a third time.* Sailed the Boddingtons and Sugar-cane for Bengal. "From the Sugar-cane were brought up this day. . . . two expirees: they had got on board without permission. — Punished with 50 lashes each, and sent up to Toongabbe."

In the continuation of the history, no *express* statements of detention have been met with. The historian not being at this time present in the colony, the precision exhibited in the former volume no longer presents itself in the same degree. During the latter period, the conception which it seems to be the object to present to view, is rather the removal of the restraint than the continuance of it. It is not, however, the less perceptible, that even at this time it was *restraint* that constituted the *general* rule, and that whatever instances of the exercise of the opposite *liberty* took place, were the result of so many *special* permissions, and constituted but so many *exceptions* to, and confirmations of the rule.

No. 11, II. p. 11. 6*th December* 1796.— "Although they every day saw that no obstacle was thrown in the way of the convict *who had got through the period of his transportation with credit and a good character*, but that he was suffered to depart with the master of any ship who would receive him, and a certificate given to him of his being a free man, yet, &c." By this it appears as plainly, that, among *expirees* themselves, there were *some* to whom the liberty of departure was refused, as it does that there were *others* to whom it was granted.

No. 12, Ib. p. 49. *September* 1797. — "As the masters were *seldom* refused permission to ship such as were free." From this passage it follows, that, at this time likewise, though there were but *few* instances, yet there were *some*, in which such permission was refused.

No. 13, Ib. p. 45. *August* 1797. — Sailed the Britannia and the Ganges. "The commander of the latter was *permitted* to take on board several convicts that had become free."

No. 14, p. 125. *September* 1798. — Sailed the Barwell for China. "Her commander was *allowed* to receive on board about 50 persons, who had completed their period of transportation."

No. 15, p. 57. *October* 1797. — "Decreasing daily as did the number of working men in the employ of government, yet" [at this time it is stated that] "the governor *could not refuse* granting *certificates* to such convicts as had served their respective terms of transportation; and no less than 125 men were at this time certified by him to be free. Most of these people had no other view in obtaining this certificate than the *enabling them*, when an opportunity offered, *to quit the settlement*, or following their own pursuits till that time should arrive." *Could not refuse?* Why so? He had without any difficulty refused on the former occasions, mentioned in Nos. 1, 3, 4, 5, 7, 10: what was there to prevent him now? From hence it should seem, that by this time some legal scruples had arisen, in some breast or other, either in the colony or at home: and that from thence it was, in the first place, that the granting of the certificate, *at or about* the expiration of each man's term, was regarded as in some measure *obligatory;* in the next place, that the effect of such certificate, when obtained, was to confer on the individual the liberty of departure: — a *primâ facie* liberty at any rate, though probably subject at all times to revocation by special order.

No. 16, p. 298. *August* 1800. — "Several certificates were granted this month, to persons who had served their terms of transportation."

SECTION XIII.

EXPIREES, DURING DETENTION, KEPT IN A STATE OF BONDAGE.

No. 17, I. 74. *July* 1787. — Freedom from *bondage*, refused along with liberty of *departure*, on the same ground, viz. the want of evidence of the commencement of the term of servitude. See above, Nos. 1 & 2.

No. 18, I. 169. *July* 1791. — *Expirees*, who wished *not* to become settlers in New South Wales, ordered to work there for twelve or eighteen months certain. See No. 4.

No. 19, I. 208. *April* 1792. — Expirees "become numerous." To fourteen of them the choice of the place where they were to labour (where these *freemen* were to be *forced* to labour) is stated as an "*indulgence.*"

No. 20, I. 474. 4*th* *October* 1796. — *No expiree* was now *allowed* "*to remove himself* without permission *from the public work*. But, notwithstanding *this had been declared in public orders, many withdrew* themselves .... on the day of their servitude ceasing." *For this* "*they were punished, and ordered again to labour.*"

No. 21, II. p. 22. *February* 1797. — "Several convicts who had served their respective terms of transportation, having applied to be discharged from the victualling books of the colony, and allowed to provide for themselves, it was determined that, *once during a given time*, certificates of their having so served their several sentences should be granted to them, together with the permission they solicited." — *Once during a given time: i. e.* once a-year, once a-quarter, or once a-month, &c., if the sense that presents itself to me is what was meant. This being the case, the time when each man was restored to liberty, was the time — not when his *right* to it commenced — not when *law* and *justice* required that he should be restored to it — but a time which recommended itself to the imagination, by some such idea as that of *order* and *regularity:* — at any rate, by some idea or other, which in the order of importance occupied in certain conceptions a higher rank than that of *law* and *justice.* What would be the feelings of the good people in England, if, by the influence of any such love of order on the mind of a secretary of state or sheriff, prisoners were in future to be discharged from prisons *here*, not as at present, when their respective terms are up, but in gangs together, say every quarter-day? so that a man, for example, whose sentence was for a month, should, for the sake of *good order*, be kept in jail three months longer, all but a day or two, if his month happened to end a day or two after quarter-day?

No. 22, Ib. II. p. 23. *March* 1797. — "It appeared by the *books*, in which were entered the *certificates* granted to the convicts who had again become *free* people, that there were at this time not less than 600 men off the store, and working for themselves in the colony: forming a vast deduction of labouring people from the public strength, and adding a great many chances against the safety of private and public property, as well as present security."

Legality (let it never be out of mind) is the object of inquiry here, not abstract *expediency*. So far as *security* and *economy* were concerned, legality and expediency seem to have been in a state of perpetual repugnance. *Legality* required that each man should be liberated from bondage the instant the time comprised in his sentence was at an end: *expediency* (had legality been out of the question) would perhaps have required that, in a society so constituted, he never should be discharged at any time.* But, as to the con-

* See Letters I. and II. to Lord Pelham. "And, (on the occasion just mentioned (No. 21,) of the expirees "who having withdrawn themselves from the public work immediately upon the ex-

trivance for making the discharges in the lump, at fixed periods, it is not quite so apparent how *expediency* was *served* by it, as it is that *law* was *violated* by it. What a system! under which, in one way or other, it was impossible not to do wrong! in which *mischief*, in a variety of shapes — frequently, perhaps, *utter destruction* — would have been the consequence of anything like an exact conformity to the rules of *law!*

In a situation like this, the conduct of the *local powers* may on *each* occasion be, upon the whole, blameable or unblameable, as it may happen: but the *system itself*, under which they are *obliged* to act, what can it be, otherwise than blameable — blameable in the extreme — upon *all* occasions?

In all these transactions — in all this time — is it in the nature of the case, that the system of illegal detention, such as it is, should have been carried on in the penal colony, otherwise than in consequence of, and in general in conformity to, *instructions* received from home?

Much argument does not seem necessary to prove, that the difference between punishment of this sort for a limited term, and punishment of the same sort for life, was no secret to those by whom it was obliterated in practice. But by a particular fact a sort of impression will often be made, beyond any that can be made by general inference.

In September 1794, in a single page, an account is given of no fewer than sixteen convicts existing at one time (one, in from a hundred to two hundred or some such matter,) in whom symptoms of reformation had been *supposed* to be discovered.* The supposed penitents here in question were *non-expirees:* to different individuals amongst them, different and very carefully measured degrees of indulgence were extended. To one of them (William Leach) whose "term" under "his sentence of transportation" had been for seven years, of which term a part only had elapsed, "permission," it is stated, was given "to quit this country" (New South Wales:) but clogged with the condition of his not returning to England, so long as his "term" remained "unexpired."

Here, then, the punishment, we see, was analysed, and its constituent elements separated: the *confinement* to New South Wales, together with the species of *bondage* incident to it, was remitted: the *exile* was left, and for the whole time, in full force.

The written instruments, serving as evidences of the indulgences thus granted, are termed, on the occasion, "*warrants of emancipation:*" and to these warrants the "*seal of the territory*" (it is stated) was affixed. What was done on this occasion being done by so many *formal*, and of course (if anything like a *register* be kept there) *registered* acts, it seems difficult to suppose but that it must have been upon Instructions from government here — Instructions in some degree correspondent in point of formality — that they were grounded. If, under any such nice distinctions and guarded limitations, power was thus given for permitting individuals to quit the colony *before* the expiration of their respective sentences — given, therefore, in contemplation of the precise tenor of each law — is it supposable, that without Instructions equally deliberate, this large and continually-increasing proportion of the population (the expirees) should have been detained as they were detained, though against law, *after* the expiration of their respective terms?

Were the Court of Common Pleas to give judgment "in an appeal of death," they would be "*guilty of felony,*" — says Hawkins, B. I. ch. 28, § 5, p. 169, 8vo., with a legion of marginal authorities for his support. — *Guilty?* why guilty? Then comes of course a technical reason:† but the *rational* one, which it shades, is evident enough; because, without what is called *mala fides* — without *criminal consciousness* — consciousness of the want of right to do what they take upon them to do — an error of that description could never, by persons of that description, be committed.‡

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piration of their terms of legal servitude, were punished and ordered again to labour") — "they seized," says the historian immediately after,* "the first opportunity of running away." "We were well convinced," it is added, "that by *these people* and those who harboured them" [viz. the *expiree* settlers in general] "*every theft was committed.*" I. p. 474.

* It is almost the first discovery of the kind mentioned, and I believe quite the last: unless it be that in the instances of the few permissions of departure granted to *expirees*, the recognition of such a change may, as far as those instances go, be supposed to be included.

† "Because, these courts having no more jurisdiction over these crimes than private persons, their proceedings thereon are merely *void*, and without any foundation."

‡ Exile, confinement, and bondage — inflictions perfectly distinct — are the ingredients of which (as already noted) the complex punishment styled *transportation* is composed. It has been so at all times, and under both systems: though under the new system the two last-mentioned ingredients possess a degree of inflexibility, strongly contrasted with their laxity under the old. When the transportation was to America, the bondage might be bought off or begged off, in the whole or in any less proportion, by agreement with the assignee of the property in the convict's service: — the bondage, which was the principal infliction of the two; and with it all the accessory accompaniments. Under the new system, neither the one nor the other is remissible, but by the act of the agent of the crown, nor therefore (regularly at least) but upon public grounds. Under the new system, again, over and above the extraordinary degree of tension thus given to these two secondary branches of the punishment, the primary branch, the exile, has

SECTION XIV.

STATUTES TRANSGRESSED BY THE LEGISLATION AND GOVERNMENT OF NEW SOUTH WALES.

THE acts of legislation, and other acts of government, that have been exercised in New South Wales, have thus been stated, in a general point of view, as being contrary to law. It remains to confront the several heads of transgression that have thus been manifested, with the several constitutional laws and principles of law, which in those several points have been transgressed and violated.

I. *Transgressions in breach of the Habeas Corpus Act—Penalties thereby incurred under the said Act.*

"And *for preventing illegal imprisonment*," says the act,* "*in prisons beyond the seas;* Be it further enacted . . . that no subject of this realm, that now is, or hereafter shall be, an inhabitant or resident of this kingdom of England . . . shall or may be *sent prisoner* . . . into ports, garrisons, islands, or places beyond the seas, which are, or at anytime hereafter shall be, within or without the dominions of his Majesty, his heirs and successors; and that every *such imprisonment* is hereby enacted and adjudged to be illegal; and that if any of the said subjects . . . hereafter, shall be *so imprisoned*, every such person . . . so imprisoned . . . may for every such imprisonment maintain, by virtue of this act, an action or actions of false imprisonment, in any of his Majesty's courts of record, against the person or persons by whom he or she shall be so committed, *detained*, imprisoned, sent prisoner, or transported, contrary to the true meaning of this act, and against all or any person or persons that shall *frame, contrive, write, seal, or countersign* any warrant or writing for such commitment, *detainer*, imprisonment, or transportation, or shall be *advising*, aiding, or assisting in the same, or any of them;† and the plaintiff in every such action shall have judgment to recover his treble costs besides damages, which damages so to be given shall not be less than five hundred pounds, . . . and the person or persons who shall knowingly *frame, contrive, write, seal,* or *countersign* any *warrant for such* commitment, *detainer*, or transportation, or shall so commit, detain, imprison, or transport any person or persons contrary to this act, *or be anyways advising, aiding, or assisting therein*, being lawfully convicted thereof, shall be disabled from thenceforth to bear any office of trust or profit within the said realm of England: and shall incur and sustain the pains, penalties, and forfeitures . . . provided . by the statute of provision and *præmunire*, . . . and shall be *incapable* of any *pardon* from the king."

To the provisions in this clause there are two exceptions, annexed by so many immediately succeeding clauses:—one, in respect of persons, by their own agreement in writing, contracting to be transported;‡ the other, in respect of persons praying to be transported;‖ as it seems they were allowed to do in some cases, as still in Scotland, to save themselves from severer punishment.

There are also *at present* as many exceptions as there are posterior statutes authorising transportation, these exceptions having for their extent that of the authority given in each case by each respective statute: but, forasmuch as by a statute authorising the crown to transport offenders for a term therein limited, no authority, either express or implied, is given to "detain" any such offender, in any case, a moment beyond such limited time, the provisions in the *Habeas Corpus act*

received a still more decided enhancement, by the addition made to the duration of it. For, supposing the *confinement* in the penal colony to be continued, as it always has been, to the legal end of each penal term (with or without the *bondage*, according to the fluctuating decision of the local despot,) it follows, that under the new system, by the mere change of local situation—I mean by the substitution of the superlatively distant, and comparatively inaccessible, territory of New South Wales, to the so much nearer and more accessible coasts of British America—an addition has thus been made to the exile—an addition which can never have been so little as four months, and may have amounted to years: and in future instances may at all times amount to any number of years.

In the case of those whose offences were prior, in point of time, to the year 1787, (the date of the act for the foundation of this colony,) this addition, though by that act rendered conformable to *law*, yet, not having anything like necessity for its justification, could not by any act be rendered conformable to *natural justice*.

Even in all *subsequent* instances, though the *injustice* was at an end, an addition of no small magnitude has been made, in this obscure and indirect mode, to the *severities* of the penal system. The severer the additional inflictions thus irregularly introduced, though in a manner not absolutely repugnant to law, the stricter, one should have thought, should have been the caution observed, to avoid adding, to the imputation of legal severity, the reproach of wanton and oppressive illegality and injustice. That the eyes of men in power were really more or less open to the distinctions thus confounded by their practice, is evidenced by the discriminations reported in the text.

* 31 C. II. c. 2, § 12.

† To the applicability of the *habeas corpus act* to the present case, the words "*sent prisoner*," "*such imprisonment*," and "*being so imprisoned*," furnish an objection, which it is easy enough to see, and, from the other words of the act, not very difficult to refute. The discussion has been drawn out at length, but would be too long for the present purpose.

‡ § 13.

‖ § 14.

remain, in the instance of every convict so detained in New South Wales, in full force and virtue.

The several *acts* and *modes of participation*, by and in which a man may be a partaker in the crime of unlawful imprisonment, are here carefully enumerated and distinguished. As to *acts*, *commitment* is one; *detainer* is another. In the instance of the convicts, the *commitment* has *not* been unlawful: the *detainer*, after the expiration of their respective terms, has been, and still is. As to *modes of participation*, the description given of them will, I believe, be found sufficiently comprehensive. To appropriate them to this or that great person, in or out of office, would at present be an useless labour. The act has done its part: the books of the council board and the treasury — not forgetting the office of the secretary of state for the home department — these, with or without certain documents from the colony, and a little explanatory oral evidence, which need not be wanting, would do the rest.

It is almost superfluous to observe, that in intendment of law, every place, circumscribed or not by walls — every place in which, without sufficient warrant, a man is kept against his will — is, to this purpose — as for all purposes of justice it is most necessary that it should be — *a prison*.* If an island larger than all Europe were not to *this* purpose *a prison*, one of the two equally declared objects of the law would be defeated, and the whole text of it turned into a dead letter.

II. *Repugnancy of such Transgressions to Magna Charta, according to Coke and Comyns.*

Thus saith *common sense:* and — what, fortunately for the present purpose, is much more indisputable and decisive — thus saith *Lord Coke;* whose *comment*, though the parliamentary *text* of it be of so much earlier date, is not here inapposite: since the *Habeas Corpus act* — an act having *Magna Charta* for its *ground-work*, has for its *object* no other than the affording an additional protection to this part of the rights which, by that sacred trumpet of the constitution, had already been proclaimed. Step by step, the oracles of the legal sage will be found advancing to the point, and at length coming fully home to it.

1. " No man," says he, " shall be exiled, or banished out of his country; that is, *Nemo perdet patriam*, no man shall lose his country, unless he be exiled according to the law of the land.†

2. " No man shall be outlawed, made an *exlex, put out of the law;* that is, *deprived of the benefit of the law*, unless he be outlawed according to the law of the land." ‡ Their time of lawful punishment being expired, the quondam convict inhabitants of New South Wales, by being kept here against their wills, are they not made " *to lose their country?*" and, by being thus *de facto* removed out of the reach of the remedial arm of justice, are they not "*put out of the law*," as effectually as if, after a wrongful judgment of outlawry pronounced against them, they had thus been deprived of the benefit of it *ipso jure*, i. e. *falso jure?*

3. " By this law of the land, no man can be exiled, or banished out of his native country, but either by authority of parliament, or, in case of abjuration for felony, by the common law."‖ In the instance of each of these convicts, there is a time for and during which he *has* been " *exiled by authority of parliament;*" and so far as it is only for and during this time that he is kept in New South Wales, so far there is no injury. But, after the expiration of this time, all the *rest* of the time during which he is kept there, he *is* kept " in *exile* and in *imprisonment, without authority of parliament*." He would be kept in *exile*, if, with the exception of this his native country, he had the choice of the whole world. But besides being kept in *exile*, he is kept even, in most instances, in *imprisonment*, confined as he is to the insulated, however extended, region of New South Wales.

4. " This" [Magna Charta] " *is a beneficial law, and is construed benignly:* and therefore the king cannot send any subject of England, against his will, to serve him out of this realm; for, that would be an exile, and he should *perdere patriam:* no, he cannot be sent against his will into Ireland, to serve the king as his deputy there, because it is out of the realm of England: for, if the king might send him out of this realm to *any* place, then, under pretence of service, as ambassador, or the like, he might send him *into the furthest part of the world, which, being an exile, is prohibited* by this act." § To send the meanest of these convicts to this "*furthest part of the world*," against his will, though it were to be governor there, would thus be an offence: an offence, in the first place, against *Magna Charta;* in the next place, against the *Habeas Corpus act*. These men, not *one* of whom Majesty itself could order to continue there, were it even to be governor there, against his will, these are the men whom, *by thousands*, his Majesty's ministers are keeping there *still* in bondage.

5. If " a felon . . . is under custody of the king's officer [it] is an imprisonment in law."§ He that is under lawful *arrest* is said to be *in prison*, although it be *not intra parietes carceris*.¶

6. " *Imprisonment* doth not only extend to

* Inst. 46, 589. † Inst. 46. ‡ Ibid.

‖ II. Inst. 47. § Ibid. ¶ II. Inst. 589.

false *imprisonment*, and unjust, but for *detaining* of the prisoner longer than he ought *where he was at first lawfully imprisoned.*"*

7. "If any man, by colour of any authority, *where he hath not any in that particular case*, arrest or *imprison* any man, or *cause him* to be arrested or imprisoned, this is against the act; *and it is most hateful, when it is done by countenance of justice.*"

Had Lord Coke been a prophet as well as a lawyer, he could not have pointed more surely to the present case.†

III. *Transgressions in Breach of the Petition of Right*, 3 C. I. c. 1.

In this statute, among the petitions contained in § 10, after the recital that "commissions" had then of late been "issued forth" "for proceeding by martial law," is this— "That hereafter no commissions of like nature may issue forth to any person or persons whatsoever, to be executed as aforesaid, lest by colour of them any of your Majesty's subjects be *destroyed*, or put to death, contrary to the laws and franchise of the land."

After this comes the concluding section (§ 11,) which is in these words:—

"All which they most humbly pray of your most excellent Majesty, as their *rights and liberties, according to the laws and statutes of this realm;* and that your Majesty would also vouchsafe to declare, that the awards, doings, and proceedings, to the prejudice of your people, in *any* of the premisses, *shall not be drawn hereafter into consequence or example;* and that your Majesty would be also graciously pleased, for the further comfort and safety of your people, to declare your royal will and pleasure, that *in the things aforesaid, all your officers and ministers shall serve you according to the laws and statutes of this realm*, as they tender the honour of your Majesty, and the prosperity of this kingdom. Quâ quidem petitione lectâ, et plenius intellectâ, per dictum Dominum Regem taliter est responsum in pleno Parliamento, viz. Soit droit fait come est desire."

In full contradiction to this statute, it appears from the journal of the Judge-Advocate, that, in April 1790, in New South Wales, by the governor of New South Wales, martial law was actually proclaimed.‡ In the *petition of right*, the territory on which the commissions thus branded with illegality had been executed, stands described by words of no greater amplitude, indeed, than the words "*this realm.*" Of *colonies* no mention is there made:—good reason why, no such dependencies being at that time in existence.‖ But, if the principles already laid down in this behalf are just, no just reason could be built on this ground, for regarding the *petition of right* as being in this point of view inapplicable to New South Wales. In the first place, what should hinder that settlement, though at the distance of the antipodes, from being considered as parcel of "*this realm?*" Not local distance: for this, as we have seen already, did not hinder the whole of the intended plantations in America from being parcel of the manor of East Greenwich. In the next place, among the petitions contained in the concluding section above quoted, is this—"That your Majesty will also vouchsafe to declare that the . . . proceedings to the prejudice of your people in any of the premisses shall not be drawn hereafter into consequence or *example;*" and moreover. "that *in the things aforesaid, all your officers and ministers* shall serve you according to the laws and statutes of this realm."

On this, as on all other occasions of *necessity*, real or apparent, I impute not any moral blame to the *governor:* moral blame might, for aught I know, have been imputable to him, had he acted otherwise.§ *Elsewhere*,

* II. Inst. 53.

† "Every restraint of the liberty of a freeman" (says the Abridgment of *Chief Baron Comyns*) "will be an imprisonment,"—"though it be in the high street, or elsewhere, and he be *not* put into any *prison* or *house*." Besides the authority of *Lord Coke*, as above, he quotes two others (*Cro. Car.* 210; per Thorpe: Fitzh. Bar. 310.) I have them not at hand, nor is it material. Comyns is a channel that *adds* to the authority of the original source, instead of weakening it. And (what, if there could be a doubt, would render his interpretation a still more apposite one than any that could have been given by Lord Coke) Comyns wrote *after the Habeas Corpus act*.

They would both of them have expressed themselves more fully, though scarcely more intelligibly, if they had said—Every restraint of the liberty of locomotion, will be an *imprisonment:* every restraint upon the liberty of locomotion, on the part of a freeman, *i. e.* of a man free from such restraint by law, will be an act of *false imprisonment*.

‡ "The Lieutenant-governor, immediately after the loss of the Sirius, called a council of all the naval and marine officers in the settlement, when it was unanimously determined that martial law should be proclaimed; that all private stock, poultry excepted, should be considered as the property of the state; that justice should be administered by a court-martial to be composed of seven officers, four of whom were to concur in a sentence of death . . . . The day following, the troops, seamen, and convicts, being assembled, these resolutions were publicly read, and the whole confirmed their engagement of abiding by them, by passing under the king's colour, which was displayed on the occasion." Collins, I. 104.

‖ Charters had been obtained, as above, and in a certain degree acted upon; but any settlement, understood to be a permanent one, had scarce as yet been made.

§ In a passage in the third Institute, written without mention of the petition of right, and therefore it may be presumed before the passing of it, "If a lieutenant," says Lord Coke, "or other that hath commission of martial authority, in time of peace, hang, or otherwise execute, any

however — I mean to his Majesty's "officers and ministers" here at home — I see not how it can be that moral blame should not be imputable: I mean, if, under *constitutional* blame, *moral* be included — if a regard for the constitution of their country — for the "*laws and statutes according to which*" they are thus pledged "*to serve*" their royal master — have any sort of place among the articles of their moral code. Amongst the documents which composed the legal armature of the governor was any such power as that of declaring martial law, in that nursery of despotism, included? If so, then has there been, in that behalf, on their part, an open and point-blank breach made in this constitutional and hard-earned bulwark of the constitution. Again, be this as it may, when with or without precedent authority, from these his Majesty's "officers and ministers," martial law had *actually* been proclaimed, was information of such proceeding officially transmitted to them in consequence? That, in one way or other, at one time or other, information of this fact has come to their cognizance, is beyond dispute: if not by the next conveyance, and in the way of official correspondence (an omission not naturally to be presumed,) at any rate it was received by them in 1798, through the medium of the press. It is therefore at any rate with their knowledge that the petition of right has thus been violated. On the occasion of this, any more than of so many other exercises of unconstitutional powers, have they ever condescended to apply to parliament — I do not say for *precedent* authority — but so much as for an *ex post facto* indemnity? Not they indeed: no, not in any one of the multitude of instances that have called for indemnity at least, if not for punishment.

IV. *Transgressions in Breach of the Declaration of Rights.**

This statute, so familiar to English ears, and once at least so dear to English hearts, under the name of the *Bill of Rights*, opens with the recital of twelve heads of transgression, "whereby the late King James the Second, by the assistance of divers evil counsellors, judges, and ministers employed by him, did endeavour to subvert . the laws and liberties of this kingdom."

Of those *twelve* heads of royal transgression, of which in those days *England* had been the scene, *seven* at least present themselves, as having had their counterparts in *New South Wales:* with this difference, that, in the most material instances, the transgressions that at that time gave birth to the Revolution in this our island were but peccadillos in comparison of the enormities acted on that distant theatre. In England, the subversion was but attempted: at the antipodes it has been completed — complete in design, from the first moment — completed in the execution, so soon as occasion called for it: the subversion of English liberties having been the very object and final cause of the foundation of this English colony. The words of the clause, which it became necessary to copy, present another difference, but happily too striking a one to every loyal eye to require any further mention of it.

No. 1. *Transgression the 1st in England.* — "By assuming and exercising a power of dispensing with and suspending of laws, and the execution of laws, without consent of parliament."

Analogous Transgression in New South Wales. — Exercising legislative power by the hand of the governor there, without authority from parliament, in an habitual train of enumerated instances, to the number of sixty or seventy, or upwards, as already exemplified in § 10: besides other instances, not as yet specifically ascertainable. The word *analogous* requires correction. It is evident enough how inconsiderable the transgression is which consists in the mere act of *dispensation* or *suspension*, put upon here and there a law already existing, in comparison of an habitual and *positive* exercise of an illegal power of legislation, *in all cases.*

No. 2. *Transgression 2d in England.* — "Committing and *prosecuting* divers worthy prelates, for humbly petitioning to be excused from concurring to the said assumed power of suspending and dispensing with laws."

Analogous Transgression in New South Wales.—Confining within this land of illegal bondage, and even *without* "*prosecution,*" punishing by arbitrary power, viz. with whipping—divers persons formerly guilty, but who had been restored, in point of law, to the condition of innocent persons, by the expiration of their terms of legal punishment.†

No. 3. *Transgression 3d in England.*— "Issuing and causing to be executed, a *commission* under the Great Seal for erecting a *court* called the Court of Commissioners for Ecclesiastical Causes."

Analogous Transgressions in New South Wales.—1. Instituting a court called a *civil court*, without authority from parliament.‡

2. Punishing divers persons, on divers occasions, in divers manners, by the single authority of the governor, for pretended offences created by so many acts of legislative authority exercised by the governor: for ex-

man by colour of martial law, this is murder; for this is against Magna Charta, cap. 39. . . and here the law implieth malice." The law and Lord Coke may imply malice as they please: in a case such as that before us, God forbid I should be malicious enough to imply it!

* 1 W. III. Sess. 2, c. 2.

† Supra, § 12. ‡ Coll. I. p. 7.

ample, in some instances, by destroying stills,* pulling down houses,† destroying oars. These, though on the mention of them presenting the appearance rather of "outrages" committed by individuals, were among the acts done by the governor in the exercise of these illegal powers.

No. 4. *Transgression the 4th in England.* —"Levying money to and for the use of the crown, by pretence of prerogative, for other time, and in other manner, than the same was granted in parliament."

Analogous Transgression in New South Wales.—Levying for the use of the crown a tax of 6d. per bushel on corn, and other taxes, applied towards the expense of building a jail at Sydney.‡

No. 5. *Transgression the 7th in England.* —"Violating the freedom of election of members to serve in Parliament."

Analogous Transgression in New South Wales.—Legislation, exercised by the governor alone, without authority from parliament at home, or the concurrence of any assembly, standing in the place of parliament, in New South Wales.

No. 6. *Transgression the 10th in England.* —"Excessive bail . . . required . . . to elude the benefit of the laws made for the liberty of the subject."

Analogous Transgression in New South Wales.—Married men, whose terms were expired, not suffered to quit the colony, without *finding security* for the maintenance of their wives and children, if left behind.‖

No. 7. *Transgression the 11th in England.* —"Illegal and cruel punishments inflicted."

Analogous Transgression in New South Wales.—Perpetual exile, accompanied with perpetual confinement and perpetual slavery, inflicted on his Majesty's subjects, altogether without cause; whatever offences they had been convicted of, having been previously expiated by appropriate lots of punishment, marked out by law. Of the mere endeavour to escape from this combination of illegal and cruel punishments — the humble and peaceable endeavour without anything like *force* — an additional lot of illegal punishment, illegal whipping, was the appointed consequence.

Under this head, the enormities imputed to James the Second were mere peccadillos, in comparison of the more palpably "*illegal*," more "*cruel*," and above all prodigiously more numerous enormities of the like complexion, committed under ——— My pen refuses to complete the sentence.§

After the statement of the several heads of *transgression* by which the rights in question had been *violated*, the act proceeds to declare the *rights* themselves in certain articles, the first of which is in these words: "The pretended power of *suspending* laws, or the execution of laws, by regal authority, without consent of parliament, is illegal."— But, if simple *suspension* or *dispensation* — (*i. e.* abrogation for a time in individual instances) be thus illegal, how much more flagrant must be the illegality of *positive* enactment, and that without any limitation as to the nature of the case?

In § 64, after declaring the rights and liberties in question to be "the true ancient and indubitable rights of the people of this

* Coll. I. 450. † Ib. 300, 471, 482.

‡ Coll. II. 41, 214, 283, 297.

‖ The reasonableness of the obligation, supposing the imposition of it had been guarded from abuse by proper checks, and warranted by law, can never amount to a justification of such an act of coercion, limited as it was by no such checks, and sanctioned by no such warrant. And whence came the pretence for imposing it? From the very act of those who, in bringing forward any such plea, must *take advantage of their own wrong*, ere they could avail themselves of it. By that conjugal affection, by which these poor females were in a manner compelled to avail themselves of the means afforded them for sharing in the exile of their husbands, they were enticed into this *cage;* and, out of the *physical* bar, which *there* opposed itself to the return of the females, a legal bar was *thus* constructed, for preventing the return of both sexes, males as well as females.

§ The most striking, of the few instances of inordinate punishment that could have been alluded to in this article of the bill of rights, was the whipping (certainly a most severe one) of *Titus Oates.* But the crime for which Oates thus suffered was but *one*, in a system of murders of a most terrific and atrocious complexion,— murder by the hand of justice, though left out of that denomination in the early and dark ages of our law. It would have required the united enormities of a dozen or a score of the most guilty among the colonists of New South Wales, to make up a mass of guilt equal to that which issued from this one murderous tongue.

In point of *illegality*, the utmost that can be alleged, against the penal inflictions thus condemned by the Bill of Rights, is an excess — on the side of severity indeed, but in the exercise of a power plainly discretionary, and having by law no specific limits: in the case of the modern system of illegal punishments, the legal portion had in every instance been marked out by the clearest limits: and it is by the palpable transgression of these limits, and by a course of contempt, as direct and pointed as it is possible to manifest, towards the repeatedly declared will of the supreme power by which these limits had been marked out, that the enormities, thus censured by the ancient constitution, have been committed in these our days.

In point of *multitude* of transgressions, for every instance of punishment, in respect of which illegality could thus have been imputed to the penal system of that time, a hundred at least might be found, of the more cruel and more palpably illegal masses of punishment, with which the administration of penal justice has thus been stained.

kingdom," the act concludes with "declaring and enacting," that "*all officers and ministers whatsoever* shall serve their Majesties and their successors *according to the same in all times to come.*"

The wretches in question, whatever may have been their crimes, were they not—are they not still, and as truly as the very best of their betters, so many individuals of "*the people of this kingdom?*" And thus it is, then, that his present Majesty, the venerable and beloved successor of the royal founders of these rights and liberties, has been "*served*" by "*the officers and ministers of his time:*" thus it is, that the "*ancient and indubitable rights*" of this helpless and defenceless portion of his people, have been respected and protected by these his "officers and ministers."

IV. *Transgressions in breach of the several Transportation Acts, by which that Punishment has been appointed for limited lengths of time.*

It would be a double charge of the same article, to state these as so many acts of delinquency, distinct from, and over and above those already referred to, in their character of transgressions against the *Habeas Corpus act.* It is by these several statutes, that the limits of legal punishment are marked out, in the several respective instances; it is in the transgression of those limits in each instance that consists the violation offered to that sacred law.

It would, moreover, be a waste of paper to give, by a string of references, a specific list of the several particular laws thus transgressed: it would be making so many useless transcripts, from the already existing indexes and abridgments.

In this complicated body of enormity, perspicuity requires that the distinction between the two main branches be kept in view. The one consists in the system of groundless, as well as illegal punishment; the other in the system of illegal legislation and government:—the former, in the oppression exercised upon individuals; the latter, in the usurpation exercised by the servants of the crown over the authority of parliament:—the former, in the wound given to the penal branch, and through that alone to the constitutional branch of the law; the other in a system of delinquency, striking more directly against the constitutional branch. The relation of the latter system of transgression to the former, is that of a *means* to an *end:* it was for the purpose of the oppression exercised upon individual subjects, that the authority of his Majesty in parliament was thus usurped by his "officers and ministers."

One thing, in regard to the question of *law,* requires particularly to be observed: which is, that though the right of the crown to legislate in this new-founded colony, without the concurrence, either of the two other estates of the supreme legislature in the mother country, or of a subordinate assembly of states in the colony, were as clear as, I flatter myself, the contrary has been made out to be, the stain of illegality would not even thus be cleared away: for, admitting, on the part of the King's governor of New South Wales, the right of legislating to every other effect imaginable, even then no such supposition could be entertained, consistently with any sort or degree of supremacy on the part of parliament, as that of a right of making ordinances in New South Wales, in direct repugnancy to the several acts of parliament, by which express limitations stand annexed to the several lots of punishment respectively appointed by those acts. And as to the *Habeas Corpus act,* should even the letter of that sacred charter be (as I can scarce conceive it to be) deemed not to have been violated, the violation of the spirit of it would still remain as plain and palpable, as it could have been in any of the cases, the experience of which may be supposed to have given occasion to the law.

As to everything that concerns *motives* and *extenuations*—*motives* by which any of the transgressors may be supposed to have been led into transgression—extenuations that may be supposed capable of being grounded on those motives—discussions on any such topics as these, might in the present state of the business be regarded as premature. The essential subject of solicitude is the Constitution: the essential operation is the healing the wound that has thus been given to it: that object being accomplished by the requisite votes and laws, everything else may in comparison be deemed of light importance; and may without much danger be left to float upon the tide of popular and party favour. The object on no account to be lost sight of is *futurity:* that being provided for at any rate, it is a matter of little comparative moment what degree of indulgence may accompany the retrospect, which cannot altogether be omitted to be taken of the *past.* The fact of transgression, declared, then would come the consideration of the censure, if any, and the deductions or set-offs to be made, on the score of motives, intentions, or past services, real or supposed, in other lines. All would be lost—the constitution would be betrayed and sacrificed—if, dazzled by the lustre that circles the head of this or that arch-delinquent, the eye of parliament were to show itself insensible to the distinction between right and wrong, and the quality of the criminal were to be accepted as a warrant for the crime. It was not in the case of James the Second—it was not in the case of that

misguided, yet most religious, though so unhappily religious king: it saved him not from forfeiture, much less from verbal censure. It remains to be seen, whether the constitution, which, in the seventeenth century, even a king was punished and expelled for violating, is to be complimented away, and made a sacrifice of, to the pride of this or that domineering subject, in the nineteenth century—in this maturer age, in this supposed period of constitutional improvement, and more firmly established rights.

Compare the case of this immense, yet too real, because uninspectable Bastile, with that of the scene of kindred abuse in miniature,—the home-jail thus hyperbolized and stigmatized—in *Coldbath Fields*. See what was the conduct of parliament in the one case, and from thence say what it ought to be—what, if consistency be the rule, it cannot but be in the other. Information to parliament of mismanagement in a prison—a lawful prison—employed as such under the law for the suspension of the Habeas Corpus act. No principle of the constitution violated—no authority setting itself up to make ordinances repugnant to the laws, and subversive of the authority of Parliament. The alleged cause of the abuse, malpractices on the part of a single jailor, negligence or connivance on the part of certain magistrates, his official superiors. On this ground—on this single ground—an address is presented to his Majesty by the House of Commons, for an inquiry into the management of this jail; an address presented with the express concurrence of the chancellor of the exchequer; and a commission of inquiry is issued accordingly—issued by the crown,* and executed.†

On the present occasion, his Majesty's subjects kept by hundreds, ere now, perhaps, by thousands, in a state of exile and bondage, without end and without cause: the four grand bulwarks of the constitution all broken through, for the very purpose of this causeless and endless punishment; the authority of parliament treated by the servants of the crown with a contempt already become habitual and rooted:—is the supposition so much as an endurable one, that after information thus exhibited, though it be by so obscure a hand, parliament should sit still and silent, exactly as if nothing amiss had ever happened?

When on that occasion the motion was made for the address, the delicacy of the chancellor of the exchequer of that day would not suffer him to refuse his declared concurrence with it.‡ Would the supposition be so much as a decent one, that the Chancellor of the Exchequer of the present day would show so little respect to the precedent thus set by his predecessor, as to refuse to the very vitals of the constitution that attention which it was then not thought decent to refuse to the police of one of the prisons.||

* 2d September 1800; printed by House of Commons. Order dated 18th December 1800.

† Report of commissioners, dated 1st November 1800; printed as above.

‡ Parliamentary Register, 22d July 1800.

|| Without a thought of any application to existing circumstances, I happened but now to open the reign of Charles I., in *Hume*. If prejudices of any kind be deemed imputable to that prince of historians, they will hardly be of that cast, which would dispose a man to exaggerate the mischief resulting from a transgression of the limits prescribed by the constitution to the power of the crown. Whether to that dispassionate, acute, and comprehensive mind, the wounds given to the constitution on the ground of the penal colony would have presented themselves as matters of indifference—as incidents in which the body of the people have no concern—is a question, the answer to which may be read, I should suppose, without much difficulty, in the following passages:—

Vol. VI., 8vo, p. 316, anno 1637. Speaking of ship-money, "What security," say the arguments which he exhibits as conclusive, "what security against the further extension of this claim? . . . Wherever any difficulty shall occur, the administration, instead of endeavouring to elude or overcome it by gentle and prudent measures, will instantly represent it as a reason for infringing all ancient laws and institutions: and if such maxims and such practices prevail, what has become of national liberty? What authority is left to the *great charter*, to the *statutes*, and to that very *petition of right*, which in the present reign had been so solemnly enacted by the concurrence of the whole legislature?" So far Hume. The breach of those two constitutional safeguards constituted in those days, according to the historian, the superlative of tyranny. The *Habeas Corpus act* and the *Bill of Rights* have since been added. To triumph over those more ancient laws, the violation of which cost Charles the First his crown and life, was not enough: the violation of the Habeas Corpus act, and the Bill of Rights—a course of systematic violation persevered in for fourteen years—has accordingly been added to the triumphs of ministers in these our times.

Along with those two fundamental laws, other "statutes" are mentioned by the historian in general terms: and, as an aggravation of the tyranny, the *then* present reign is noted as the period that gave birth to the *Petition of Right*, one of those two fundamental laws. Statutes of inferior account, in crowds, contribute to swell the triumph obtained over law (with grief I say it) in the *now* present reign: and among them the several *transportation acts*, to which, in numbers too great for reference, this same reign has been giving birth.

Ib. p. 314, anno 1637.—"It was urged," . . . continues the historian, "that the plea of necessity was in vain introduced into a trial at law; since it was of the nature of necessity to abolish all law. . . ." p. 315. "And as to the pretension that the king is sole judge of the necessity, what is this but to subject all the privileges of the nation to his arbitrary will and pleasure? To expect that the public will be convinced by such reasoning, must aggravate the general indignation, by adding, to violence against men's per-

sons, and their property, so cruel a mockery of their understanding."

Ib. p. 421, anno 1641.—"In those days," observes the historian, "the parliament thought"—and according to him—"justly thought that the king was too eminent a magistrate to be trusted with discretionary power, which he might so easily turn to the destruction of liberty. And in the event it has hitherto been found, that, though some sensible inconveniences arise from the maxim of adhering strictly to law, yet the advantages overbalance them, and should render the English grateful to the memory of their ancestors, who, after repeated contests, at last established that noble, though dangerous, principle." Established it? So *they* thought (it seems) in *their* times: so Hume thought (it seems) in *his* time. In these *our* times, does that valuable principle *remain* established? or, after having been overthrown and trampled upon for these fourteen years, is it now finally to be abandoned, and to remain lifeless and extinct for ever?

In one point, indeed, at least according to the view given of it by this historian, the parallel would be found to fail. "The imposition of ship-money, independent of the consequences," (viz. the anti-constitutional consequences above spoken of) "was a great and evident advantage to the public," viz. "by the judicious use which the king made of the money levied by that expedient."

Ib. p. 319, anno 1637.—So far as to the unconstitutional impost of *that* day. As to the anti-constitutional system of the present times, what degree of "judiciousness" there was, either in the design of it or in the "*use*" made of it, may be seen in the Letters to Lord Pelham, by any man when conscience will permit him to look the subject in the face.

Ib. p. 360, anno 1640.—"The lawyers had declared, that *martial law* would not be exercised, except in the presence of the enemy; and because it had been found necessary to execute a mutineer, the generals thought it advisable, for their own safety, to apply for a pardon from the crown."—So much greater was the respect paid to the constitution by the king's servants—Strafford of the number—in those days, than in these. See above.

Ib. p. 319, anno 1587.—The cause of the unfortunate pertinacity on the part of the misguided king, and the deceitful ground on which it rested, are thus delineated. "Though it was justly apprehended, that such precedents, if patiently submitted to, would end .... in the establishment of arbitrary authority; Charles dreaded no opposition from the people, who are not commonly much affected with consequences, and require some striking motive to engage them in a resistance to established government."

Such at that time had been the *reliance*, but now follows the *result*.

Ib. p. 317, anno 1637.—"Hampden, however," observes the historian, "obtained by the trial the end for which he had so generously sacrificed his safety and his quiet: the *people* were roused from their lethargy, and became sensible of the danger to which their liberties were exposed. Then national questions were canvassed in every company; and the more they were examined, the more evidently did it appear to many, that liberty was totally subverted ... slavish principles, they said, concur with illegal practices; ... and the privileges of the nation, transmitted through so many ages, secured by so many laws, and purchased by the blood of so many heroes and patriots, now lie prostrate at the feet of the monarch. What though public peace and national industry increased the commerce and opulence of the kingdom? This advantage was temporary, and due alone, not to any encouragement given by the crown, but to the spirit of the English, the remains of their ancient freedom. What though the personal character of the king, amidst all his misguided counsels, might merit indulgence, or even praise? He was but one man; and the privileges of the people, the inheritance of millions, were too valuable to be sacrificed to his prejudices and mistakes."

Ib. p. 375, anno 1640.—The jealousy of the people was roused; "and, agreeably to the spirit of free governments, no less indignation was excited by the view of a violated constitution, than by the ravages of the most enormous tyranny." Such was the language—such the spirit—of the people of that day: such their language and their spirit, when both as yet were temperate, and had not burst forth into the wild explosions that ensued. In the case of New South Wales, *both* provocations—the "*violated constitution*," and the "*enormous tyranny*"—go hand in hand: the tyranny, the end; the violation of the constitution, the means. What will now be the spirit of a British parliament? what will now be the spirit of the British people? It remains to be seen in what degree, if in any, the people of this day retain the virtues of their ancestors.

They must be degenerate indeed, if they are to be lulled into any such persuasion, as that the constitution will be capable of retaining for their benefit its protecting force, after it has been made apparent, that, with ultimate impunity, it may thus be trampled upon in the most vital parts of it, for such a course of years.

DRAUGHT OF A CODE

FOR THE

ORGANIZATION OF THE JUDICIAL ESTABLISHMENT

IN

FRANCE:

WITH

CRITICAL OBSERVATIONS ON THE DRAUGHT PROPOSED BY THE NATIONAL ASSEMBLY COMMITTEE,

IN THE FORM OF

A PERPETUAL COMMENTARY

BY JEREMY BENTHAM,
OF LINCOLN'S INN, ESQ.

MARCH 1790.

DRAUGHT OF A CODE

FOR THE

ORGANIZATION OF THE JUDICIAL ESTABLISHMENT.

TITLE I.

OF COURTS OF JUSTICE IN GENERAL.*

ART. I. — THE fountain of justice is *the nation, through the channel of the legislature.* Justice shall not be administered in the name of *the king*, or any other single person.

ART. II. — The judges shall in general be elected by the persons subject to their jurisdiction; and that in manner hereinafter specified.

ART. III. — No office conferring judicial power, *or the exclusive privilege of ministering by particular services to the exercise of such power*, shall be created *by the sole authority of the king for any purpose, much less* in order to be sold.

ART. IV. — Justice shall be administered gratis. Provision shall be made for the ministers of justice by salaries. *All exaction, or acceptance of fees, by persons any way concerned in the administration of justice, is hereby declared illegal.*

ART. V. — *All stamp-duties or other duties upon law proceedings are hereby abolished: and all laws made to ensure the collection of such duties, are so far forth repealed.*

ART. VI. — The judges have no share in legislative power. Appointed for the express purpose of enforcing obedience to the laws, their duty is to be foremost in obedience. Any attempt on the part of a judge to frustrate or unnecessarily to retard the efficacy of *what he understands to have been* the decided meaning of the legislature, shall be punished with forfeiture of his office.

ART. VII. — *But rules of law derivable from decrees of judges and customs of courts in times past, shall still be in force, so long as they remain unsuperseded by acts of the legislature.*

ART. VIII. — No judge has any power to make general regulations; *not even relative to the mode of procedure in his own court.*

ART. IX. — *But should any case arise before a judge, in respect of which it appears to him that the legislature, had the same been in their contemplation, would have made a provision different from that which the letter of the law imports, he is hereby authorised, and even required, so to deal therein as it appears to him that the legislature would have willed him to do, had such case been in their contemplation: taking such measures withal, whether by exacting security, or sequestration of goods or persons, or otherwise, as shall be necessary to prevent the happening of any irremediable mischief in either event, whether the legislature abide by the law, or alter it.*

ART. X. — *The suspensive power hereby given extends even to such laws and other acts of authority as shall have issued from the National Assembly, or from any subordinate authority, at any period posterior to that of the convocation of the present National Assembly: and it may be exercised with still less reserve with regard to such former laws and rules of law as, though not expressly abolished, may appear unconformable to the principles manifested by the National Assembly, and especially to those contained in the declaration of rights.*

ART. XI. — *Provided always that the judge, as soon as possible after the case calling for the exercise of such suspensive power has presented itself to his notice, shall make report thereof to the National Assembly.*

ART. XII. — *Copies of such report shall also be sent to the several courts of justice to which his court is subordinate: so that the dispatching of the original report be not de-*

* In this Title and Title II. the passages in italics point out the principal differences between this Draught and that of the Committee of the National Assembly of France, delivered in 21st December 1789. In the other Titles, the difference being total, italics would have been of no use. [Although a great part of this Draught is repeated, for comparison with that of the Committee of the Assembly, and for comment, yet as a considerable portion (Titles from 4 to 10 inclusive, 14 and 15) is not repeated, and there are other variations, it is thought best to reprint the draught at length, as first published.]

layed on account of the dispatching of such copies.

ART. XIII.—*In such report shall be contained—*

1. *A statement of the matter of fact which has happened to call for the execution of the law.*

2. *A quotation, with proper references, of the passage of law in question.*

3. *A statement of the mischief which in his conception would ensue, were the letter of the law to be observed.*

4. *A statement of the course provisionally taken by him for avoidance of such mischief, in pursuance of the power given him by Art. IX.*

5. *To such report he is at liberty, and is hereby invited, to subjoin a note of such alteration in the text of the law, as appears to him most proper for guarding against the mischief in question for the future; whether such alteration consist in defalcation, addition, or substitution; pointing out the very words in which the passage in question, after the alteration suggested, ought to stand.*

ART. XIV.—*The true and only proper object of inquiry in the exercise of this suspensive power, as far as it regards laws posterior to the convocation of the present National Assembly, is, not what* ought *to have been the intention of the legislature in the case in question, but only what would have been so, had the same been present to their view.*

ART. XV.—*All judges and other ministers of justice are also hereby invited to make report, at any time, of any inconvenience which appears to them likely to ensue from the literal execution of any article of law, even although no case calling for such execution shall have yet arisen: as also to propose questions relative to the import of any passage in the law, which may have appeared to them ambiguous or obscure.*

ART. XVI.—The subordinate representative assemblies, in the exercise of the powers of administration, and *subordinate legislation*, lodged in their hands by the supreme legislature, are [not?] accountable to the judicial power. The members of them cannot therefore be punished, or cited to appear before it, for any act done by them in their quality of members. *Obedience to an act of any such assembly, acting within the sphere of the authority committed to it by the sovereign legislature, is to be enforced by the courts of justice in like manner as to an act of the National Assembly itself. But for that purpose, it is necessary that the courts of justice should take cognizance, upon every occasion, of the question, whether in such instance the subordinate assembly has or has not confined itself within its proper sphere, and to decide accordingly upon the validity of their act.*

ART. XVII.—The judges, elected as *in manner hereafter ordained*, shall enjoy their offices for life, *unless divested thereof in manner hereinafter specified.*

ART. XVIII.—*Judicial proceedings, from the first step to the last inclusive, shall, in all cases but the secret ones hereinafter specified, be carried on with the utmost degree of publicity possible.*

ART. XIX.—Every subject has a right to plead his own cause, in every stage, and before every court, as well by word of mouth as in writing; *and as well by himself as by the mouth or hand of any person of his choice, not being specially debarred by law.*

ART. XX.—*All monopoly of the right of selling advice or service in matters of law (saving provisionally the profession of a notary) is abolished. Any advocate may practise in the capacity of an attorney; any attorney, in the capacity of an advocate; and any man, not specially debarred, in the capacity of either.*

ART. XXI.—*In every suit, civil as well as penal, both parties shall attend in person at the commencement of the cause, in presence of each other and of the judge (unless in as far as they may stand excused by special reasons, in manner hereinafter specified); and so from time to time during the continuance of the cause; there to depose, and to be interrogated, at any time, they or their representatives, each on the part of the other, in the same manner as witnesses.*

ART. XXII.—All privilege in matters of jurisdiction stands abolished. All subjects stand henceforward upon an equal footing, in respect, as well of the manner of pleading, *and the order in which their causes are to be heard and decided*, as of the choice of the courts before which they are to plead.

ART. XXIII.—The constitutional order of jurisdiction shall not be disturbed, nor the subject drawn out of his natural court by *royal* commissions, or attributions of causes, or arbitrary evocations.

ART. XXIV.—*Resolved*, That this Assembly will, with all convenient speed, proceed to the enactment of a law to determine in what cases, and how, the power of evocation may be lawfully exercised.

ART. XXV.—*Resolved*, That this Assembly will proceed with all possible expedition to frame a new code of Procedure, of which the object shall be to render the administration of justice as simple, as expeditious, and as little expensive as possible.

ART. XXVI.—*Resolved*, That this Assembly will proceed with all possible expedition to frame a new code of Penal Law, of which the object shall be to render the punishments in every case as proportionate, as mild, and as apposite, as possible; never losing sight of the maxim, that every *lot or degree of* punishment which is not necessary, is a violation

of the rights of man, and an offence committed by the legislator against society.

TITLE II.

DISTRIBUTION AND GRADATION OF THE COURTS OF JUSTICE.

ART. I.—In every *parish* [or canton] there shall be a court of justice of *immediate jurisdiction, under the name of the Parish Court,* composed of a single judge; saving such consolidations or divisions of parishes, as may be made for this purpose, in virtue of the powers hereinafter given.*

ART. II.—In each district there shall be a court of justice of immediate jurisdiction, under the name of the *immediate* DISTRICT COURT, *composed in like manner of a single judge.*

ART. III.—*In each district there shall also be a Court of Appeal, under the name of the District Court of Appeal, composed in like manner of a single judge.*

ART. IV.—[In each department there shall be a COURT *of Appeal,* under the name of the DEPARTMENT COURT, *composed in like manner of a single judge.*] [*Quære, the necessity of this court?*]

ART. V.—At Paris there shall be a Court of Appeal, in the last resort, under the name of the *Metropolitan,* or SUPREME *Court, composed in like manner of a single judge.*

ART. VI.—The decrees of the Metropolitan Court of Justice shall be final, *except such on account of which censure shall have been past on the judge by a decree of the National Assembly, in manner hereinafter specified.*

ART. VII.—*To each of the several classes of courts above mentioned is given authority over all sorts of persons, and in every sort of cause, throughout the kingdom; saving only, the difference between jurisdiction immediate and appellate, and the authority of certain tribunals of exception, in as far as the same is hereby acknowledged, and provisionally confirmed.*

ART. VIII.—*These are,* 1. *Courts-Martial in the land service; in as far as the powers of such courts are confined to the maintenance of discipline among military men.*

ART. IX.—2. *Naval Courts-Martial; in as far as their powers are confined to the maintenance of discipline among men engaged in the naval department of the public service.*

ART. X.—3. *Causes relative to matters happening at sea, on board private vessels, belong to the jurisdiction of the courts of any territory where the vessel is in harbour;* viz. *to the immediate courts, if no regular judgment has been passed in virtue of any lawful authority on board the vessel; or, if there has, then to the courts of appeal.*

ART. XI.—4. *Courts Ecclesiastical; in as far as the powers of such courts are confined to the maintenance of ecclesiastical discipline among ecclesiastical men.*

ART. XII. 5.—*All representative assemblies; for the purpose of putting a stop to, and punishing offences committed by members or others, in face of the assembly.*

ART. XIII.—*All courts, other than the tribunals of exception, as above specified, shall be comprised under the common appellation of* Ordinary Courts.

ART. XIV.—*In* every *ordinary court* [*but the parish court, and in every parish court where there is a judge specially appointed, as in Tit. V.*] *there shall be a Pursuer-general and a Defender-general.*

ART. XV.—*Attached to the authority of the judge, as well as to that of the pursuer-general and defender-general of every ordinary court, shall be the power of appointing substitutes, or* deputies, viz. *one* permanent *and* occasional *ones as occasion may require.*

ART. XVI.—The name of *Advocate-General,* or *Public-Advocate,* shall be common to pursuers and defenders general; and the name of *Magistrate* to judges, advocate-generals, and the permanent deputy of each.

* The difficulty of deciding between *Parish* Courts and *Canton* Courts, and between the adoption and rejection of the *Department* Courts, necessitated, in some parts of this draught, a latitude of expression, and thence a sort of obscurity, which would not otherwise have had existence. At a period, too late for the requisite alterations, I am become clear in my own mind against the *Department* Courts, and the question, as between *Parish* and *Canton* Courts, depends upon local considerations, not within my reach.

TITLE III.

OF JUDGES OF THE ORDINARY COURTS.*

§ 1. *Appointment—Continuance in Office—Power and Rank.*

ART. I.—A [Judge[a]] (principal) shall be elected by the electors chosen by the active citizens of the territory over which he is to be [judge,[a]] in the same manner as a member of the administrative body of that territory; parochial [judges[b]] excepted, of whom in Tit. V., and metropolitan [judges.[b]]

ART. II.—On the first election, to be eligible to this office, a man must be seven and twenty years of age, and must have exercised the functions of a man of law, for three years

* With the variations indicated by the ensuing notes, the contents of this will serve for Tit. XI. Of PURSUER-GENERALS, and Tit. XII. Of DEFENDER-GENERALS.

a { PURS. GEN. Pursuer-General.
  { DEF. GEN. Defender-General.

b { PURS. G. Pursuer-Generals.
  { DEF. G. Defender-Generals.

in a superior court, or for five years before an inferior tribunal.[c]

Under the denomination of Men of Law, are comprised, for this purpose, 1. Judges of every description; 2. King's advocates and attornies, and their substitutes; 3. Advocates; 4. Attornies; [5. Secretaries of courts? *Greffiers?*] [6. Notaries?]

ART. III. — No vacancy in any [judicial office[d]] but the lowest shall be filled, but out of the same rank of [judges,[b]] or that next below: but [judges[b]] in those ranks all over the kingdom are alike eligible.

ART. IV. — No vacancy in the lowest rank of [judges][b] principal shall be filled but by some one who has served in the station of [judge][a] depute permanent, and that for at least [three] years, on elections posterior to the year [1793.]

ART. V. The [judge[a]] principal of every court, (except the parish [or canton] court, and the metropolitan) shall hold his office for life, unless divested of it in one or other of the following ways: —

1. Resignation.
2. Forfeiture, judicially pronounced.
3. Amotion, pronounced by the suffrages of a majority of the whole number of the electors entitled to vote at the last preceding election, general or particular, holden for the choice of a magistrate, or of a member of the administrative body of his territory.
4. Amotion, pronounced by a majority of the whole number of members of the administrative body next in rank above that of the territory of which he is [judge.[a]]

ART. VI.—By amotion, without forfeiture, a [judge[a]] loses his rank as such, but not his salary, nor the capacity of being rechosen, even immediately.

ART. VII.—[e] Every judge, for the enforcement of his decrees judicially given, has, in case of necessity, the command over all persons, without distinction, within the bounds of his territory, the king only, and judges of equal or superior rank, excepted.

ART. VIII. —When a [judge,[a]] in the exercise of his function, goes out of his own proper territory into another, he takes his [rank and power[f]] with him, subject only to the [rank and power[f]] of the co-ordinate and superior [judges[b]] of that territory.

ART. IX. — A judge principal[e] shall have precedency of all persons over whom he has power, as according to Art. XI.; a judge of appeal taking place of a judge of immediate jurisdiction for the same territory, and judges of the same court according to the priority of their appointment.

ART. X. — *Judicial duty*[g] *ought not to be neglected for any other.* Acceptance of a judicial office vacates every other, judicial or not judicial: and acceptance of an office not judicial, vacates every judicial one. Much less shall a Judge exercise any other profession, such as that of notary, advocate, or attorney. This extends to Judges-Deputes permanent, but not to judges natural, of whom in Tit. V.

ART. XI. — [*A judge ought to stand clear of offence, and of suspicion of partiality.*[h]] No [judge[a]] shall give his vote at any election; nor use any means, direct or indirect, to influence the votes of others.

§ 2. *Pay.*

ART. I. —The expense of the salary of an [instituted judge[a]] of the parish court shall be defrayed by the parish:

[Of a canton court, by the district:]

Of a district court, by the district:

[Of a department court, by the department:]

Of the metropolitan court, by the nation.

ART. II. — On the [day] preceding the day of election, an auction shall be held before the directory of the administrative body of the territory charged with the expense of the salary, under the name of *the Patriotic Auction:* at which the candidates shall be at liberty to attend, in person or by proxy, in order to declare, each of them, what he is willing to give, if anything, to the common fund of the territory, in the event of his being elected to the office. And thereupon the office shall be put up by the president, each bidder being at liberty to advance as often as he thinks proper, in the manner of a common auction.

ART. III. — As soon as it appears that no candidate will make any farther advance, each shall give in an undertaking in writing, in which shall be specified what he binds himself to give, in the event of his being elected.

ART. IV.—At the same time each candidate shall give in an inventory of his estate, as well in possession as in expectancy, together with all charges thereupon, with an estimate

a { PURS. G. Pursuer-general. DEF. G. Defender-General.

b { PURS. G. Pursuer-Generals. DEF. G. Defender-Generals.

c This article is copied from Tit. IV. Art. V. of the Committee's draught, relative to the District Courts. The specification I have subjoined seems requisite, to prevent uncertainty.

d { PURS. G. Office of Pursuer-General. DEF. G. Office of Defender-General.

e PURS. G. and DEF. G. Omit this article.

f PURS. G. and DEF. G. Authority.

g PURS. GEN. and DEF. GEN. To this article substitute—Acceptance of the office of Pursuer [or Defender] General at any court, vacates every other; and acceptance of any other office, vacates that of Pursuer [or Defender] General. Nor shall a Pursuer [or Defender] General exercise the profession of notary, advocate, or attorney. This extends to Pursuer [or Defender] Generals and Deputes permanent.

h PURS. GEN. and DEF. GEN. Omit this clause.

of the clear value thereof in ready money; the whole being signed by the candidate himself, and verified by his oath.

ART. V. — At the same time each candidate shall give in a paper stating his pretensions, of what nature soever, on which he grounds his hopes of being chosen; such as his age, the time during which he has acted in the capacity of a man of law, in what branch of the profession, before what courts, and the like: and such paper shall also be signed by the candidate himself, and verified by his oath.

ART. VI. — The above inventory may either be open or sealed: if sealed, the declaration of its verity, concluding with the signature, shall be on the outside: and it shall be reserved unopened till the event of the election is declared; at which period, if he whose act it is should prove the successful candidate, it shall thereupon be broken open; if not, it shall be returned to him unopened.

ART. VII. —The above-mentioned undertakings and declarations shall forthwith be printed together on the same paper, and a copy given to every elector [ ] days before the election.

ART. VIII.—If, the election having fallen upon one of the bidders, he should fail in complying in any particular with the terms of his engagement, his right to the office shall thereupon cease; and upon a vacancy declared by the competent court, at the instance of the procurator syndic of the administrative body, a new election shall be decreed: but time may be allowed him for performing his engagement, or an equivalent accepted by the court on his application, the procurator syndic being heard on the other side.

ART. IX. —The penalty, in case of falsehood in a declaration given in as above, shall be, if the falsehood were wilful, forfeiture of the office, together with the purchase-money, if any were paid: if the falsehood happened through inadvertence coupled with temerity or negligence, a discretionary fine.

ART. X.—From the salary of every [judge[a]] shall be deducted [25] per cent. upon the interest of the capital representing his private fortune; yet so as that the remainder shall not be less than [one fourth] of the whole; unless in as far as any farther deduction may have been comprised in the undertaking he has delivered in.

ART. XI. — In the case where, his salary not having undergone the utmost deduction of which it is thus susceptible, any accession happens to his fortune by succession, donation, or bequest, to the value of [12,000] livres or upwards, he shall, within [half a year] after effects to that amount have been received, give in a supplemental declaration of the particulars of such accession; and, upon an account settled with the officer who stands charged with the payment of his salary, a proportionable deduction shall take place, from the day when such supplemental declaration was given in.

ART. XII. —The contribution offered at the auction, may be either in ready money, or in any other shape; and in particular, it may be in the shape of a release of the whole, or any part of the appointed salary: and in this case, the deduction prescribed by Art. X. shall be understood to be included; but no offer shall be deemed valid, which would reduce the income of the candidate below the amount of the appointed salary.

ART. XIII. — On the day when the successful candidate is sworn in, and previous to his being sworn in, any member of the corporate assembly, before which he is sworn in, shall be at liberty to put to him all such questions as may tend to ascertain the truth and sufficiency of the several declarations he has given in: and whoever exercises the functions of procurator syndic, is specially charged with this duty, and responsible for the neglect of it.

ART. XIV. —That time and opportunity for scrutinizing the accuracy of the inventory above mentioned may not be wanting, the [judge elect[a]] shall not be sworn in till [ ] days after it has been broken open, nor till [ ] days after it has been published in [*the newspaper most current in the place.*]

ART. XV. — In case of amotion without forfeiture, the salary paid shall be the appointed salary, without deduction: and any contribution that has been given in consequence of the patriotic auction shall be refunded, but without interest.

ART. XVI. — In case of resignation, the contribution shall in like manner be refunded, but no salary continued.

§ 3. *Attendance.*

When Injustice sleeps, Justice may do the same.

ART. I. — The [judgment-seat[i]] ought never to be empty, during any part of the *juridical day*, throughout the year: in an immediate court, never: in a court of appeal, never where there is any cause on the paper, ripe for hearing.

ART. II. — The juridical day shall be of [twelve] hours: viz. from [eight] to [eight,] allowing only [one] hour within that time, viz. between [two] and [three] for refreshment.

This extends not to the judges termed Natural.

a { PURS. GEN. Pursuer-General.
DEF. GEN. Defender-General.

i { PURS. G. Seat of the Pursuer-General.
DEF. G. Seat of the Defender-General.

Art. III. — A [judge immediate,[k]] when absent from the fixed judgment-seat upon out-duty (as upon a view or the examination of a sick person,) ought to take care that it be filled, if possible, by some [judge[a]] depute permanent or occasional, on pain of being responsible for the failure.

Art. IV. — A [judge's[l]] salary shall be reckoned by the day, and paid him every [week] by [*the paymaster.*] It shall be paid him nowhere but upon the [judgment] seat; or, in case of sickness, in his own apartment: a day's pay being deducted for every day of absence, otherwise than upon duty; except vacation-days which he is allowed to take, [thirty] in the course of the year, at his choice; provided that the [judgment] seat be not at any time left vacant.

Art. V. — The day's pay thus to be received shall be a day's pay of the *appointed* salary: the difference, if any, between that and the *clear* salary remaining after the contribution furnished according to § 2, shall be made up by quarterly advances, which the [judge[a]] shall make on [*the usual quarter-days*] to [*the paymaster:*] nor shall he be reimbursed any deficiencies occasioned by unallowed days of absence.

Art. VI.—Declaration to be taken by every [judge[a]] every time he receives his salary:—

I, A. J., solemnly declare, that since the last time of my receiving salary, I have not at any time, during juridical hours, been absent from the duty of my office, except during the following days, viz. [ ], nor absent from the judgment-seat, except the following days, when I was out upon duty, at the places, in the causes, and for the purposes following, viz. [ ].

Art. VII. — A copy of every such declaration, signed by the [judge,[a]] shall, on that same day in which it was made, be hung up, in a conspicuous manner, near the judgment-seat, there to remain till the next quarter-day.

Art. VIII. — A [judge[a]] is to be understood to have been absent from duty on any day, if, in the course of that day, he has not sitten at least [one hour;] and if, during the rest of the day, he has not been within [an hour's] call of the judgment-seat, except when out upon distant duty: word being left with [ ] where he was to be found.

Art. IX.—[Judges[b]] of immediate courts are also bound to go upon duty, in cases of necessity, at all hours, in manner hereinafter specified.

§ 4. *Oath of Office.*

Art. I. — The following oath shall be taken by every [judge[a]] upon his entrance into office. While pronouncing it, he shall stand up before the judgment-seat, in open court, with his left hand on his bosom, and his right lifted up to heaven: —

I, A. J., being raised by the choice of my fellow-citizens to the office of [ ], do solemnly promise and swear:

[Art. II. [m] — 1. That so long as I continue in possession of my said office, I will, to the best of my ability, administer justice to all men alike, to high and to low, to rich and to poor, not suffering myself to be biassed by personal interest, by hope or fear, or by favour or aversion towards any individual or class of men or party in the state.]

Art. III. — 2. That I will not endeavour to keep secret, but on the contrary study by all suitable means to render public, the proceedings belonging to my office, in all cases in which the law ordains them to be public.

Art. IV. — 3. That I will keep secret, to the utmost of my power, the proceedings belonging to my office, in as far the law ordains them to be secret.

Art. V. — 4. That I will not on any account, out of the regular course of justice, give ear to, but indignantly reprove, any application that may be made to me concerning any cause in contemplation of its depending or coming to depend before me, much less give any opinion or advice relative thereto: and that, should any such application be made to me in writing, I will forthwith produce and read the same in open court, although it should be contained in a private and confidential letter.

Art. VI. — 5. That I will at no time accept any gift or favour that shall have been offered me, in the view either of influencing or recompensing my conduct on any particular occasion in the discharge of the functions of my office: and that, in case of my suspecting any favour to have been done or offered me with any such view, I will forthwith declare and make public my suspicion: nor will I knowingly and wittingly suffer any such offer or recompense to be made, on any such account, to any person dependent upon or connected with me; but that, on suspicion of any such offer or recompense, I will forthwith make public such my suspicion, together with the grounds thereof, and the names of all parties concerned.

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a { Purs. G. Pursuer-General. / Def. G. Defender-General. }

b { Purs. G. Pursuer-Generals. / Def. G. Defender-Generals. }

k Purs. G. Pursuer-General of an immediate Court. Def. G. Defender-General of an immediate Court.

l { Purs. G. Pursuer-General's. / Def. G. Defender-General's. }

m Purs. G. and Def. G. *For this clause substitute the three clauses inserted under* Tit. XI. Art. VII. VIII. IX.

ART. VII. — 6. That I will not, on the occasion of any pecuniary or other bargain, directly or indirectly avail myself, or endeavour to avail myself, of the influence or authority of my station to obtain any advantage to myself or any other.

ART. VIII. — 7. That I will not take any part whatsoever in any election; nor use any means, direct or indirect, to influence the vote of any other; excepting only the public statement of my pretensions according to law, on any election in which I shall myself be candidate.

ART. IX. — 8. That I will not willingly absent myself from duty, except to the extent of the time allowed me by the law, or in case of unavoidable necessity, resulting from sickness or otherwise; nor then, without making the best provision in my power for keeping my place supplied.

ART. X. — 9. That I will, as far as depends upon me, give to every cause that comes into my hands, the utmost dispatch that shall appear to me consistent with the purposes of justice: nor will I[n] put off any cause, or give to any cause the priority over another, but for special reason publicly declared.

ART. XI. — 10. That I will at no time, through impatience or otherwise, knowingly cause or permit justice to suffer by undue precipitation; and in particular, that I will not bestow less attention upon the cause of the poor than of the rich; considering that, where small rights are seen to be contemned, great ones will not be deemed secure; and that importance depends not upon nominal value, but upon the proportion of the matter in dispute to the circumstances, and its relation to the feelings of the parties.

ART. XII. — 11. That I will not, through favour to those who profit by the expense of the administration of justice, connive at, much less promote, any unnecessary expense; but on the contrary study, as much as in me lies, to confine such expense within the narrowest bounds compatible with the purposes of justice.

ART. XIII. — 12. That I will not, through impatience, or favour to the professional advocate, show discountenance to him who pleads his own cause, or to him who pleads gratuitously the cause of his friend, but rather show indulgence and lend assistance to their weakness.

ART. XIV. — 13. That I will, in all things touching the execution of my office, pay obedience to the law: and that[o] I will do my utmost to carry the same into execution, according to what shall appear to me to be the intent of the legislature for the time being; not presuming to set my own private will above the will of the legislature, even in such cases, if any, where the provisions of the law may appear to me inexpedient; saving only[p] the exercise of such discretionary suspensive power, if any, with which the legislature may have thought fit to entrust [me.[q]]

ART. XV. — 14. That I will not either make or revoke any appointment of a depute, permanent or occasional, with a view to favour or prejudice any suitor otherwise than according to justice, but for the common convenience of suitors, and only to the extent of the number which shall appear to me requisite to that end.

All these engagements I hold myself solemnly pledged to fulfil, by all the regard I owe either to the displeasure of Almighty God, or to the indignation and contempt of my fellow-citizens.

ART. XVI. — A copy of the above oath, printed in the largest type, and on one side only of the paper, with the signature of the [judge[a]] at length to every clause, and at the end the date of the day when signed, shall be kept hung up in a conspicuous situation, near the [judgment[b]] seat, so long as he shall continue in office.

§ 5. *Deputes.*

ART. I. — The duty of the permanent [judge[a]] depute shall be to take the place of his principal, and with the same [powers,[f]] whensoever the principal shall happen to be absent from duty, or preoccupied therein.

ART. II. — The [power[f]] of the [judge[a]] depute permanent shall last as long as his principal continues in the same office, and until a vacancy in the office is filled up; unless the appointment be sooner revoked, which it may be at any time, or terminated in any of the ways in which the office of a judge principal may be vacated.

ART. III. — To the station of [judge[a]] depute permanent, no emolument of any kind shall be annexed; except a habit of office to be worn while on duty, and a mark of honour to be worn at all times during his continuance in the station: and in rank he shall take place next his principal.

ART. IV. — A [judge[a]] principal is civilly responsible for the acts of his deputes, permanent or occasional, having recourse to them for his indemnity: also criminally, in case of his concurring with, or barely conniving at, any behaviour known to him to be criminal on their part.

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[n] PURS. G. and DEF. G. *Insert* — seek to.

[o] PURS. G. and DEF. G. *Insert* — in as far as appertains to my office.

[p] PURS. G. and DEF. G. *Insert* — the reclaiming.

[q] PURS. G. and DEF. G. The Judge.

[a] { PURS. G. Pursuer-General.
{ DEF. G. Defender-General.

[b] { PURS. G. Pursuer-General's.
{ DEF. G. Defender-General's.

[f] PURS. G. and DEF. G. Authority.

ART. V.—A [judge[a]] depute permanent shall pronounce and sign the same oath as a [judge[a]] principal, and in the same manner; excepting only the words [*permanent or*] in the 14th clause; and making the requisite change at the commencement relative to the style of office.

ART. VI.—A permanent [judge[a]] depute is bound to the same attendance as his principal; except that he is allowed double the number of vacation days in the year (taking them only when his principal is upon duty,) and that he is not liable to be called to night-duty while his principal is in the way.

ART. VII.—Attached in like manner to the office of [judge[a]] principal, shall be the power of appointing occasional [judges[b]] depute for the purpose of performing duty in any particular cause, or relative to any particular point in any particular cause.

ART. VIII.—To the function of occasional [judge[a]] depute shall belong neither emolument nor permanent honour: but for distinction's sake, he may wear, while on duty, a medallion, or other such mark of office.

ART. IX.—An occasional [judge[a]] depute shall, previously to the first time of his taking upon him that function, pronounce and sign, in the presence of the judge who appoints him, [*an oath the same as the above, mutatis mutandis:*] and entry of his having done so, shall forthwith be made in the register-book of the court.

ART. X.—A permanent [judge[a]] depute has in like manner, and under the same responsibility, power of appointing occasional [judges[b]] depute. But it is to be expected that he exercise it only in case of necessity, and for the reason that such appointment cannot be made by the [judge[a]] principal: and such appointment is at any time revocable by the [judge[a]] principal.

ART. XI.—As often as any act is done by or before a [judge[a]] depute, either permanent or occasional, mention shall be made as well upon the face of the act, if written, as upon the register-book, by or before whom; and if in the instance of a [judge[a]] depute occasional, by whom appointed.

ART. XII.—Care ought to be taken to avoid, as much as conveniently may be, the shifting of the same cause to different [judges[b]] unless when the points of which they respectively take cognizance, happen to be totally independent of each other: that [the judge who gives judgment[r]] may be as little as possible under the necessity of taking the grounds of his [opinion[s]] at second hand, from another man.

a { PURS. G. Pursuer-General.
  DEF. G. Defender-General.

b { PURS. G. Pursuer-Generals.
  DEF. G. Defender-Generals.

r PURS. G. and DEF. G. each person.

s PURS. G. and DEF. G. Proceedings.

§ 6. *Responsibility.*

ART. I.—The punishment of a [judge[a]] for misbehaviour in relation to his office, may be to all or any of the effects following:—

1. Injunction to be more circumspect in future.
2. Suspension from office.
3. Deprivation.
4. Incapacitation for any office, or for certain offices.
5. Fine.
6. Imprisonment.
7. Obligation to make satisfaction, in the way of pecuniary compensation, or otherwise, to the party injured.
8. When the effect of the misbehaviour has been to produce death, or any other corporal suffering, on the part of any one, in the way of punishment, or otherwise; such offence, if accompanied with *evil conscience*,[t] [*mauvaise foi*,] shall be punished as if committed with the offender's own hands.

ART. II.—Judges, pursuer-generals, defender-generals, and their respective deputies, being privy to any misbehaviour, accompanied with evil conscience, on the part of each other, and not informing in due time, are punishable, as for connivance.

TITLE IV.

OF JURISDICTION.

ART. I.—That shall be styled a man's *natural court*, within the territory of which his ordinary and fixed abode is situated; that, his *occasional* court, within the territory of which he happens to be, for the time being: the defendant, for instance, at the instant he receives a summons, or is put under arrest.

ART. II.—Regularly all causes, as well penal as civil, belong to the defendant's *ordinary* court: if he has more ordinary abodes than one, then to the courts corresponding to any one of such abodes, at the option of the pursuer.

ART. III.—But it may be dismissed in the state in which it is, at any time, from any one such court to any other, at the requisition of either party, upon consideration had of the mutual convenience of both.

ART. IV.—A cause may also be commenced in the defendant's *occasional* court; subject in like manner, to be dismissed to his ordinary court.

ART. V.—But a cause relative to immovable property, may be heard and determined in the court *of the subject-matter*. Any such cause may be begun there; and if begun in the defendant's court, or elsewhere, it may be

t A full definition of the expression, evil conscience, [*mauvaise foi, mala fides*] is absolutely necessary: but its place is in the Penal Code.

removed from thence, by either of the parties, unless previously inhibited upon hearing before the judge. But although begun there, or removed thither, it may be dismissed, by the judge, to the defendant's court, if he thinks proper, in consideration of mutual or preponderant convenience.

ART. VI. — A cause relative to specific property not immovable, shall be begun in the court of the defendant; but may be dismissed to the court of the subject-matter, upon consideration of mutual or preponderant convenience.

ART. VII. — A cause relative to a subject-matter situated in more jurisdictions than one, may be heard and determined in any one: and the decision of any one such court may bind the whole subject-matter; but it may be dismissed to any of the others, on consideration of mutual or preponderant convenience.

Any aggregate of different effects, comprised under, or referred to, by one and the same claim, are to be considered to this purpose, as forming one and the same subject-matter: for instance, the stock of a farm, situate within divers territories.

ART. VIII. — A cause may even be dismissed to the *pursuer's court*, or to any foreign court, upon consideration of preponderant convenience: but the difference, in point of convenience, in this case ought to be considerable, and clearly established.

ART. IX. — In the estimation of comparative convenience, the pecuniary circumstances of the parties ought particularly to be taken into account.

ART. X. — A plaintiff, instead of carrying the cause before the *proper* court, whether of the defendant or of the subject-matter, may carry it before the court of any territory adjoining, so that the seat of such adjoining court be not farther distant than that of the proper one: but in so doing, he acts at the peril of costs, should the distance be found greater.

ART. XI. — A plaintiff shall be responsible, in costs and damages, as for vexation, if, without any convenience to himself, and merely with a view of putting his adversary, or any one else, to inconvenience, he commences a suit in, or removes it to, a court known to be inconvenient to them, even though the court be not *improper:* or, even with views of convenience, if the comparative convenience be deemed too slight on his side, to leave him any real hope of seeing the cause retained there.

ART. XII. — Where there are more plaintiffs than one, or more defendants than one, the convenience of every such party is to be taken into the account.

ART. XIII. — By consent of all parties, any civil cause may be carried on, in the first instance, before any immediate court whatever; nor shall it in that case be removed from thence but by like consent, or on account of very evident predominant convenience manifesting itself, since the giving of the consent.

ART. XIV. — But in such cases it behoves the judge to be upon his guard against causes collusively removed to a distant scene, for the purpose of prejudging the interest of a third person: and in such case, besides applying, should the case admit of it, the punishment appointed for this sort of fraudulent attempt, it behoves him, by suitable notices and publications, to render the success of it impracticable elsewhere.

ART. XV. — Causes, penal as well as civil, to which a French citizen is party, and in which the cause of action arose elsewhere than within the territory of France, belong regularly to the defendant's courts: viz. to the courts of appeal, if judgment has already been given in any foreign court; otherwise, to the immediate courts: but in both cases subject to removal, on the ground of preponderate convenience.

ART. XVI. — A plaintiff, who, having commenced a suit in any court, commences another suit, relative to the same matter, in the court of another district, without leave obtained of the court first applied to, is responsible, as for vexation.

ART. XVII. — The judgment, order, and warrant of every court, shall be held good in the courts of every other territory, unless reversed in a court above, or pending the appeal for that purpose. Under that restriction, every court ought to lend its assistance to the execution of the order of every other.

ART. XVIII. — An order or warrant of a foreign court shall, when countersigned by a judge of the territory, receive the same obedience as if issued by him originally. It may even be obeyed without such counter-signature; and ought to be, rather than, on account of the delay occasioned by the application for such counter-signature, any failure of justice should ensue: unless the person whose obedience is called for, has reason to suspect the genuineness of it, or to know that the legality of it is disputed by the court of the territory in which such obedience is called for.

ART. XIX. — When a cause, or any incidental operation to be performed in the course of a cause, is brought before a judge, if he finds himself so circumstanced, in any respect, as to stand exposed to the action or influence of any cause of *partiality*, he ought forthwith to make known every such cause, except in the case hereinafter excepted (Art. XXII.) and decline acting accordingly: but if the party to whose prejudice alone such partiality, if it existed and operated, could

redound, insists upon the judge's taking cognizance notwithstanding, he may, and, rather than there should be any failure of justice, he is bound to do so.

Art. XX. — That no cause of partiality may be undisclosed, any questions tending to produce such disclosure may, at any time, be put to any judge, by or in behalf of any person interested: and to every such question, if pertinent in matter, and not disrespectful in manner, the judge is bound to make answer on the spot.

Art. XXI. — Examples of causes of partiality: —

1. Pecuniary interest of any kind, present or future, certain or contingent.
2. Relationship by blood, or alliance to any of the parties.
3. Intimate acquaintance.
4. Enmity, or litigation.
5. Relation of landlord or tenant.
6. Relation of debtor or creditor, if to an amount of sufficient importance to create any interest or dependence.

In accepting cognizance, or declining it, on such grounds, the judge ought to govern himself rather by the actual affection, than by the external cause.

Art. XXII. — And, forasmuch as there may be secret causes of partiality, which a man could not disclose without great pain and prejudice to himself, a judge may, on such consideration, decline jurisdiction, without cause assigned, whensoever it can be done without failure of justice; doing as much as in him lies, to save the parties from suffering any prejudice thereby.

Art. XXIII. — Examples: —

Where he, or a son, or other such near relation of his, has any secret design, declared, or not yet declared, of courting any woman in marriage; or soliciting preferment, or other favour, at the hands of any person, the same being party to the cause, or connected with one who is.

Art. XXIV. — In any such case he may, without blame, silently transfer the cognizance to a judge-depute, permanent or occasional; (or, if he be a judge-depute, to his principal:) but, if this cannot be done, he may pray the party's excuse, on the general allegation of motives of delicacy, referring him to an unexceptionable judge of some adjoining territory, or in the case of a parish [or canton] court, to the district court above.

Art. XXV. — Although parties may, by consent, carry a cause before a court which is not, in any respect, a *proper one*, yet the judge is not bound, nor ought he to accept the cognizance of it, to the prejudice of the dispatch due to the suitors of his own territory.

Art. XXVI. — The following are the cases in any of which a court may be deemed a *proper* one, to the purpose of obliging the judge to take cognizance: —

If it be —

1. The court of any *defendant*, ordinary or occasional.
2. The *ordinary* court of any *plaintiff*.
3. A court *nearer situated* with respect to the abode of any of the parties than his own.
4. The court of the *subject-matter*.
5. The court of the *cause of action; i. e.* where the offence, whether public or private, was committed.
6. In case of contracts, the court of the *territory where the contract* was entered into.
7. A court adjoining to one from whence the cause has been dismissed, on the ground of an avowed cause of partiality on the part of the judge, or through motives of delicacy, as by Art. XXIV.

Art. XXVII. — A judge, though not bound to take cognizance of a cause for the purpose of *definitive* decision, is not the less bound to do any act which, to prevent failure of justice, may be necessary to be performed before the cause can be commenced in any proper court: such as the examination of a witness who is upon the point of departure; the arrestment of such witness if necessary; the examination or seizure of effects capable of supplying evidence; the seizure of effects for the purpose of insuring the responsibility of the defendant in case of conviction; and the like.*

Art. XXVIII. — Complaints of misbehaviour on the part of a judge in the execution of his office, and petitions for expedition on his part in a cause depending before him, shall be preferred only to the court of appeal to which his court is immediately subject. This extends to deputes permanent, as well as to principals.

Art. XXIX. — Other actions, as well criminal as civil, in which a judge is defendant, may be brought in an immediate court of any territory adjoining to his; but may be dismissed from thence to any other except his own, on the ground of preponderant convenience.

TITLE V.

OF THE PARISH COURT.

§ 1. *Of the Judges.*

Art. I. — To the principal ecclesiastical minister of every parish shall belong, within

* A full catalogue of these precautionary expedients belongs to the Code of Procedure.

When a cause is *already commenced* before a competent court, the order or warrant of the judge of that court will serve to compel the assistance of all foreign judges, in virtue of Art. XVII.

the limits of his parish, all the powers of an immediate judge, under the name of the *judge natural* of that parish; unless where such authority shall have been superseded by the appointment of an *instituted* judge.

ART. II.—The district assembly may, under the controul of the department assembly, decree, with the consent of any parish, that such parish shall thereafter, instead of the *natural*, have an *instituted* judge; fixing a salary, which in that case the parish shall be bound to pay, for the maintenance of the judge.

ART. III.—Upon a vacancy in such office of instituted judge, the authority of the natural judge shall revive of course, and continue till the vacancy has been filled up.

ART. IV.—The power of appointing to the office of parish judge shall belong to the district assembly, subject to the approbation of the municipality of the parish; unless where the district assembly has transferred it altogether to the municipality, which it ought to do, wherever the population and opulence of the parish is such as to afford a sufficient security against an overbearing influence on the election in the hands of a small number of individuals.

ART. V. — In the same way may be appointed any additional number of Fellow-judges, upon the terms of fixing a competent permanent salary for every such judge. But no two judges shall take cognizance at the same time of the same point in the same cause.

ART. VI.—The district assembly, under the controul of the department assembly, may give the local field of jurisdiction of any parish court an extent greater or less in any degree than that of the parish; and to that purpose may new-model the local divisions of any part of their territory, in what manner they deem most convenient; regard being had to extent, population, and the pecuniary faculties of the inhabitants.

ART. VII. — An instituted parish judge shall hold his office for life, unless divested of it in one or other of the following ways, viz.—

1. Resignation.
2. Forfeiture judicially pronounced.
3. Amotion by the suffrages of a majority of the whole number of active citizens belonging to the parochial territory, confirmed by the district assembly.
4. Amotion by the department assembly.

ART. VIII.—Amotion, without forfeiture, shall not deprive him of his salary; but may deprive him, if so ordered, of the faculty of being re-elected into the same seat.

ART. IX.—A cause commenced in a parish court, whether it be before the natural or an instituted judge, may at any time be evoked by the immediate district court, at the instance of any party, but upon consideration had of the mutual convenience of all parties. But the judge of the district court, before he issues the order of evocation, or puts a party to the trouble of showing cause against it, should assure himself, as far as may be done by the examination of the party applying for it, that the power of granting it be not abused to the purpose of vexation or unnecessary delay. And for such vexation, should that appear afterwards to have been the object, the party applying for such order shall be responsible in costs and damages.

ART. X.—Care ought to be taken, on the other hand, in penal causes, by the pursuer-general of the district, that, through simplicity or criminal connivance on the part of a judge of a parish court, the powers of such court be not abused to the purpose of acquitting an offender, by suppression or partial examination of evidence, or to let him off with less punishment than is due; particularly in cases of offences merely public, where, there being no person specially injured, there is no person specially interested to appeal: and to this end he may, without waiting to appeal, evoke the cause to the immediate district court at any time.

ART. XI. — The judge of a parish court may and ought to remit the cause of his own accord to the district court, wheresoever it appears to him that the purposes of justice would be better answered by his remitting it than by his retaining it.

Examples:—

1. Wherever it seems unlikely that the judgment of the parish court, whichever way given, would be acquiesced in: as may happen from the intricacy of the inquiry, or the magnitude of the subject in dispute; especially in a court where there is no other than the natural judge.

2. Where the cause, by reason of its complexity, is of a nature to take up more time than could be spared by the judge from his other official occupations; at the same time that the territory affords no person competent to serve in that instance in quality of judge-depute

ART. XII. — Examples of causes apt to be of a nature particularly complex:—

1. Causes relative to matters of account; especially if the account be mutual, and the items numerous. Every disputed article is in fact the subject of a distinct cause.

2. Bills for work done by artists or others, whose work it is difficult to judge of; such as architects, bailiffs in husbandry, stewards, attornies, and other agents, &c.

3. Causes relative to mercantile accounts.

4. Causes relative to the division of the mass of property left by a person deceased.

5. Causes relative to the division of insolvents' estates.

6. Causes relative to the division of common lands.

ART. XIII. — But notwithstanding such remittal, the judge, rather than suffer any evidence to be lost, ought to collect and record it, if thereto required on either side.

§ 2. *Place of Judicature.*

ART. I. — In a parish where there is no instituted judge, the ordinary place of judicature shall be the parish church; in which the natural judge or his deputy shall sit, to transact whatsoever judicial business presents itself, every time of divine service, in the face of the congregation, immediately after the service.

ART. II. — Such natural judge, or his deputy, may also do judicial business in his own house: but, for the sake of publicity, in all cases where secresy is not required, he ought rather to prefer the church, if the business can wait without prejudice to the next time of divine service.

ART. III.—In penal causes, other than secret ones, definitive judgment shall never be pronounced by the natural judge elsewhere than in church; though measures in the nature of execution may be taken provisionally, to prevent failure of justice.

ART. IV. — Causes which, being commenced in, or brought to church at a time of divine service, cannot conveniently be finished at that time, may be adjourned, on notice then publicly given, to a time nearer than the next time of divine service.

ART. V. — Every Sunday, before the conclusion of divine service, the minister shall read a list of all the causes (not secret) in which any judicial business has been done in the course of the week, with a brief intimation of the nature of the business done in each.

ART. VI.—Any person who conceives himself to have reason to complain of anything done, or omitted to be done, in the way of judicial business, by such natural judge, out of church, may, on the next Sunday after such ground of complaint comes to his knowledge, or, if on that day prevented without his default, on the first Sunday in which it is in his power, state such ground of complaint to the judge, in the face of the congregation: on which occasion any questions relative thereto may be put to him by or in behalf of the persons interested: and to every such question, if pertinent in matter, and not disrespectful in manner, the judge is bound to make answer on the spot; and, if thereto required, to set down in writing each question, with his answer, or refusal to answer, proceeding in the same manner as in the making up of a record [*procès verbal.*]

ART. VII.—No creation shall be made, as by § 1, Art. II., of an office of parish judge, without making provision at the same time for a *justice-hall*, with a dwelling-house for the judge. And until such hall and dwelling-house are built, or otherwise provided, the same use shall be made of the church, for the purposes of justice, by the instituted, as might be by the natural judge.

ART. VIII. — On Sundays, instead of the justice-hall, the court shall be holden in church, immediately after divine service; and in the case where the jurisdiction of a parish court has been made to extend over divers parishes, then alternately in the churches respectively belonging to those parishes.

ART. IX.—Minutes of the judicial business done in that parish since the last time of sitting there (such minutes being drawn up upon the plan mentioned in Art. V.) shall then also be read by the minister before the conclusion of divine service, having been furnished him for that purpose by the judge.

TITLE VI.

OF THE IMMEDIATE DISTRICT COURT.

ART. I.—To the immediate district court belongs all immediate judicial power (that of the tribunals of exception excepted) within the territorial limits of the district, in concurrence with the several parish [or canton] courts within the district.

For other matters touching its jurisdiction, see Tit. II. III. IV. and V.

ART. II.—To the judge of the immediate district court, the district assembly, under the controul of the department assembly, may add as many fellow-judges as it thinks proper, with the same powers, rank, and salary; provided that no more than one judge shall act at the same time, on the same point, in the same cause.

ART. III. — The salary of a judge of an immediate district court shall be [ ] livres a-year.

ART. IV. — In the following cases there shall regularly be no appeal from the district court of appeal to any other court: —

1. Embezzlement.
2. Theft.
3. Defraudment, except where operated in the way of forgery.
4. Robbery.
5. The attempt or preparation to commit an offence of any of the above kinds.
6. Homicide, or incendiarism, in prosecution of the design of committing an offence of any of the above kinds.

ART. V. — Appeal, however, shall go, in any of the above cases, to the metropolitan court, upon a requisition made for that purpose, and signed by any of the following sets of persons: —

1. One [fourth] part of the whole num-

ber of the members of the department assembly.

2. One [fourth] part of the whole number of the members of the district assembly.

3. One [fourth] part of the whole number of the members of the community of the town where the district court of appeal has its seat.

4. One [tenth] part of the whole number of the active citizens of the town, in a town of 4000 inhabitants, one twentieth in one of 8000 inhabitants, one thirtieth in one of 12,000 inhabitants, and so on. [See *Décret sur les Municip.*, Art. V.]

ART. VI.—To the end that due time may not be wanting for the collection of signatures, [two] days at least, both exclusive, shall intervene, in every case, between the day of sentence and the day of execution: within which interval, if three members of any of the administrative bodies, or ten of the active citizens, above mentioned, concur in signing and presenting a preliminary requisition to that purpose, [seven] such entire days, reckoning from the day of presentation, shall be given, for collecting signatures for a definitive requisition.

ART. VII. — But, although appeal be excluded, petitions for expedition may, at any time, and in all causes, be preferred from this court to the court next above, as well as complaints for misbehaviour on the part of the judge.

ART. VIII.—In civil cases, on a judgment of the district court of appeal, execution shall have place provisionally, notwithstanding the appeal; security being exacted, and the other precautions taken which are prescribed in the code of procedure, to prevent the happening of irreparable damage.

ART. IX. — So in penal cases, where the punishment decreed is no other than pecuniary; as likewise with regard to such part of the punishment, if any, as is not contested by the appeal.*

ART. X.—If, for want of such precaution, or through insufficiency of the precaution, irreparable damage should actually ensue, the least punishment to which the judge can be sentenced is, in case of evil intention [*mauvaise foi*,] forfeiture and incapacitation, together with the obligation of making such pecuniary satisfaction as is in his power: in the case of culpable negligence, or temerity, injunction to be more circumspect, together with a fine applicable in part of satisfaction.

ART. XI. — Examples of cases of irreparable damage: —

1. Loss of female honour, by delivery into the power of a false husband, father, guardian, or master.

2. Loss, destruction, or damage of effects possessed of a *value of affection:* such as trees, serving for shelter or ornament; favourite animals; uncopied manuscripts; family pictures; matchless articles of natural history, antiquities, &c.

ART. XII. — In civil cases, and in penal cases, where the punishment decreed is no other than pecuniary, no appeal shall be suffered to go from the district court of appeal till the appellant, if not a pauper, has deposited in the hands of the public advocate, on the other side, [48] livres; which sum shall be forfeited, over and above costs, if the decree of the court above is unfavourable to the appeal, unless the judge of the court above enters upon the instrument of appeal a certificate of reasonable cause.

ART. XIII. — Nor although the defendant be a pauper, unless, previously to the appeal, his advocate-general at the court appealed from shall have entered a like certificate.

ART. XIV. — But if he can find any one to advance the deposit, as likewise any responsible person to be his security for the costs, the appeal shall go, without any such certificate. And for this purpose, two full days shall be allowed him, between the signing of judgment and the execution, saving all precautions necessary to prevent the execution from being eluded.

ART. XV.—Deposit-money thus forfeited shall go to [the paymaster of the district] to the use of the district, and be comprised in the public advocate's quarterly account with [the paymaster,] according to Tit. XIV.

TITLE VII.

OF THE DISTRICT COURT OF APPEAL.

ART. I. — To the district court of appeal belongs the cognizance of all causes (those belonging to the tribunals of exception excepted) in the way of appeal, as well from the immediate district court as from the several parish [or canton] courts within the district.

For other matters touching its jurisdiction, see Tit. II. III. IV. and V.

ART. II. — To the judge of the district court of appeal may be added fellow-judges, in like manner as to the judge of the immediate district court, according to Tit. VI.

ART. III. — The salary of a judge of a district court of appeal shall be [ ] livres a-year.

TITLE VIII.

OF THE DEPARTMENT COURT.

ART. I.—To the department court belongs the cognizance of all causes in the way of appeal from the district court of appeal; or of complaint for misbehaviour on the part of

* This alludes to the appeal *a nimiâ*, or *ab incongruâ*.

the judge, or of petition for expedition; but of no cause in the first instance.

For other matters touching its jurisdiction, see Tit. II. III. IV. and V.

Art. II.—To the judge of the department court, the department assembly may add as many fellow-judges as it thinks proper, with the same powers, rank, and salary: provided that no more than one judge shall act at the same time, on the same point of the same cause.

Art. III.—The salary of a judge of a department court shall be [ ] livres.

TITLE IX.

OF THE METROPOLITAN COURT.

Art. I.—The judges of the metropolitan court shall be elected by the national assembly. No vacancy shall be filled but out of the rank of judges next below.

Art. II.—A judge of the metropolitan court shall hold his office for life, unless vacated in one or other of the following ways:

1. Resignation.
2. Forfeiture judicially pronounced.
3. A motion by a majority of all the members entitled to vote in the national assembly.
4. A motion by a majority of all the electors and members entitled to vote at the last preceding election, general or particular, for the choice of a judge of the metropolitan court, or of a member of the national assembly.

Art. III.—By a motion without forfeiture, a metropolitan judge loses his judicial rank, but not his salary. He also loses his capacity of being re-elected during the continuance of the same legislature.

For other matters touching its jurisdiction, see Tit. II. III. IV. and V.

Art. IV.—The salary of a judge of the metropolitan court shall be [ ] livres.

Art. V.—To the metropolitan court shall belong [ ] judges, with equal power, rank, and salary: provided that no more than one judge shall act at the same time, on the same point, in the same cause. But as many as happen at any time to be unemployed, may, and ought to sit as assessors without vote.

Art. VI.—To the metropolitan court belongs the cognizance of all causes not particularly excepted, in the way of appeal from the department court [or, if no department courts, from the district courts of appeal.]

Also complaints for misbehaviour, and petitions for expedition, even in such cases as are excluded from appeal.

Art. VII.—Business, as it comes in, shall be distributed among the several judges by rotation.

Art. VIII.—From the decree of a judge of the metropolitan court, neither can any appeal, nor any petition for expedition, be preferred, without being accompanied with a complaint of misbehaviour on the part of the judge: nor can any order for expedition be issued to him, nor any change be made in his decree, without censure passed on him at the same time.

TITLE X.

NATIONAL ASSEMBLY COURT.

Art. I.—Complaint against a judge of the metropolitan court for misbehaviour cannot be made anywhere but in the national assembly, nor there unless signed by [six] members.

Art. II.—If received by the assembly, it shall appoint two committees, one to try and report, the other to prosecute.

Art. III.—Such trial shall be conducted, from beginning to end, with open doors, and with the utmost possible degree of publicity.

Art. IV.—No criminal accusation shall be preferred in the national assembly against any other person whatever than a judge of the metropolitan court, except for offences committed in face of the assembly.

TITLE XI.

OF PURSUER-GENERALS.

Art. I.[u]—The functions of a pursuer-general of an immediate court shall be, in civil matters—

1. To reclaim the execution of all laws in the execution of which no individual has any special interest, and of those in the execution of which the nation has a special interest of its own, superadded to that of individuals.
2. [u]To act on behalf of the king in his individual capacity, as well in the character of defendant as that of plaintiff.
3. To act on behalf of every [*plaintiff*[v]] who, through poverty and want of friends, is unable to engage any other advocate.
4. To obviate any prejudice he sees likely to result to justice from any oversight or unskilfulness on the part of a [*plaintiff*[v]] who pleads his own cause, or on the part of his advocate, gratuitous or professional.

Art. II.—In penal matters—

1. To superintend the proceedings of every private prosecutor; to assist him, in case of oversight or unskilfulness; and to watch over him, and prevent collusion with the defendant.
2. To reclaim the execution of all penal laws, by performing the functions of prosecutor where no private prosecutor has first

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[u] Def. G. Omit this paragraph.

[v] Def. G. Defendant.

presented himself, and in the cases, if any, where individuals are not admitted to prosecute.

ART. III. — In cases where the administrative body of the territory for which he serves, is empowered to act in the character of pursuer by the hands of its procurator-syndic, and the pursuer-general is not engaged by his office in the other side, he has concurrent authority with such procurator-syndic, each cause belonging to that one of them who is first seized of it. But, to prevent collusion or remissness, each of them has a right to receive communication of all such business carried on by the other.

ART. IV. — Where a [*pursuer* [v]] whose interests a [*pursuer-general* [w]] has espoused, happens to be made [*defendant* [x]] in a cross cause growing out of that in which he was [*pursuer*,[v]] the [*pursuer-general*,[w]] and not the [*defender-general*,[y]] shall take in charge the interests of such party in such derivative cause.

ART. V.—In a court of appeal, the client of the [*pursuer-general* [w]] shall be the party who was the client of the [*pursuer-general* [w]] of the immediate court in the original cause.

ART. VI.—*Clauses in the oath of office to be taken by the pursuer-generals, in the room of clause I. in the oath appointed to be taken by judges :* —

1. That I will, at all times, be vigilant in looking out for, forward in entering upon, and faithful in executing, all such business as the law has given in charge; not suffering myself to be turned aside from the pursuit or the performance of it, by indolence, or by interest, by hope or by fear, by affection or by enmity towards any individual, or class of men, or party, in the state.

ART. VII. — 3. That in my zeal on behalf of the cause I have in charge, I will not seek to serve it at the expense of truth or justice. I will not use any endeavours to cause to be received as true, any fact which I do not believe to be true; nor as just, any conclusion which I do not believe to be just; nor my persuasion of the truth of any fact, or the justice of any conclusion, as stronger than it really is: nor will I seek to put upon the conduct of any man, any colouring other than what I believe to be true; nor will I exercise partiality in favour of the party whose interest I espouse, any otherwise than by doing such acts as justice requires to be done, and giving such counsel as justice requires to be given, on his behalf, and by applying my faculties to the discovering and presenting of such considerations as make in favour of his cause, in preference to such as make against it.

☞ *For the provisions relative to pursuer-generals*, see Tit. III. *Of Judges.*

[v] DEF. G. Defendant.
[w] DEF. G. Defender-General.
[x] DEF. G. become Pursuer.
[y] DEF. G. Pursuer-General.

TITLE XII.

OF DEFENDER-GENERALS.

ART. I. — The functions of a defender-general of an immediate court shall be, in matters civil as well as penal —

1. To act on behalf of every defendant who, through poverty and want of friends, is unable to engage any other advocate.

2. To obviate any prejudice he sees likely to result to justice, from any oversight or unskilfulness on the part of a defendant who pleads his own cause, or on the part of his private advocate, gratuitous or professional.

ART. II. — To act on behalf of the administrative body of the territory, for which he serves, in cases where the pursuer-general is engaged on the other side. But this in concurrence with the procurator-syndic of that body, in the same manner as the pursuer-general would have had to act.

☞ *For the other provisions relative to defender-generals*, see Tit. III. *Of Judges*, and Tit. XI. *Of Pursuer-Generals.*

TITLE XIII.

OF SECRET CAUSES.*

ART. I.—In certain causes the proceedings shall be secret throughout, except in the courts hereinafter mentioned. These are —

I. Where secresy is necessary to the peace or honour of families, by reason of the dishonour, or other uneasiness, which might ensue, if the disagreements and weaknesses, and other unprosperous circumstances of their members, were to be divulged to the world at large.

On this ground, the following causes are to be classed under the head of secret causes :—

1. Generally all causes in which near relations are concerned against each other.

2. Also causes betwixt guardian and ward, in as far as the propriety of the conduct of the ward comes in question.

ART. II.—Under the denomination of near relations are to be comprehended, for this

* This Title belongs properly to the Code of Procedure. A general sketch of the contents is given here, to serve as an object of comparison with the article of the Committee's Draught, [TIT. I. ART. 2.] which touches upon the topic of publicity, and that part which concerns the establishment of family-tribunals [TIT. IX. ART. 11, 12, 13, and 14;] an establishment, the design of which, it is conceived, would be better answered by a modification thus given to the proceedings of the ordinary courts.

purpose, persons related to an individual in any of the following degrees, by blood or alliance; viz.

1. Wife, or husband.
2. Descendants.
3. Father, mother, and other relations in the descending line.
4. Brethren and sisters, of the whole or half blood, and their descendants.
5. Uncles and aunts, of the whole or half blood, in any degree.

Art. III.—To this class belong, in a more especial manner, causes of the following nature:—

1. Causes between husband and wife, for disobedience, extravagance, hard treatment, adultery, or impotence.
2. Causes between parent and child for extravagance, undutifulness, idleness, theft, embezzlement, defraudment, indecorum, on one side; or hard treatment, or neglect of education, improper education, or exposal of chastity, on the other.
3. Prosecutions for incest; and causes in the course of which incest may come to be proved, or to be attempted to be proved.
4. Causes relative to the pregnancy or delivery of unmarried women, and the discovery of the father of the child.

Art. IV. — But the secresy shall not be carried beyond the occasion; insomuch that, in relation to any point in respect to which it may be clear that neither the honour nor the peace of the parties litigant, or any of them, can be affected by the publicity of the proceedings, the same publicity shall be observed as in other cases.

Such may be, for example,

1. Any mere question of law relative to a family settlement, or a will, or a share in the effects of an intestate.
2. Any question of fact in any such cause not affecting the moral character of the party, or relative to the conduct of some stranger.

Art. V.—II. Where secresy is dictated by the regard due to decency. To this class belong such causes as are covered with the veil of secresy, in order to avoid wounding or enfeebling the sentiment of modesty, as well on the part of the auditors as the persons concerned, viz.

Causes, as well penal as civil, relative to any irregularities of the venereal appetite; including several of those mentioned under the former head.

Art. VI.—In causes appointed to be kept secret for the peace or honour of families, the secret mode of proceeding shall not be observed unless on the requisition of some one at least of the parties.

Art. VII. — Causes appointed to be kept secret for the sake of decency, shall be kept so although the parties were all of them to desire the contrary.

Art. VIII.—The seal of secresy, having been once affixed, shall not be taken off, unless in the cases mentioned in Art. IV. until after judgment in the last instance: nor then, unless some one of the parties demands it; alleging for the ground of his demand, partiality on the part of the judges, or some one of them, through whose hands it has passed. The cause shall in that case be re-heard publicly before a judge of equal rank, to be named by the supreme court; and if such charge of partiality shall have been deemed rash or malicious, the offender shall suffer as well for the wound given to the peace or honour of the family, as for the calumny against the judge.

Art. IX. — III. In certain causes, secresy shall be observed at the outset, to prevent falsehood from gaining instruction. These are —

1. All penal causes admitting of corporal punishment, afflictive or ignominious, or imprisonment, or banishment for any longer term than a year.
2. All causes, civil as well as penal, upon special and satisfactory reason given for apprehending a confederacy in falsehood.

In the latter class of causes, the examination of each examinant, whether party or witness, may, and in the former shall, of course, be performed in secret; and such secret examination may even be repeated, so long as it is thought proper by the judge to examine them separately: but judgment shall never be given until the minutes of secret examination have been read in public, the examinants re-examined in public, with liberty to object to the verity of the minutes, and confrontation, where proper and possible, performed, and parties and advocates on both sides heard in argument.

Art. X. — Out of regard to pecuniary reputation, certain inquiries shall, at the requisition of any party, be made in the secret mode, in the course of whatever cause they come to be made. These are —

1. Inquiries made relative to the pecuniary circumstances of both or either of the parties, for the purpose of awarding satisfaction in case of an offence other than infamous.
2. Inquiries made, in the same view, relative to the circumstances of the party injured, in case of an infamous offence.
3. Inquiries made, in cases of debt, into the pecuniary circumstances of either party, for the purpose of ascertaining whether any and what respite shall be granted to the debtor.

Art. XI. — Present at all secret business shall be a pursuer-general and a defender-general; and, if necessary, a secretary of the court, to take the minutes, sworn to secresy in like manner as the magistrates above mentioned. [See Tit. III. § 4.]

ART. XII.—For all secret business a particular register-book shall be kept under the name of the *secret register-book.*

ART. XIII. — Secret business, unless in case of out-door duty, shall be transacted in the judge's chamber; the adjournment being performed only for the moment in incidental inquiries, and the auditory left sitting in the public place of justice

TITLE XIV.

PAUPERS.

ART. I.—The judge, if upon report by the pursuer-general or the defender-general, as the case is, it shall appear to him that, for the rendering of justice in any cause, certain expenses are necessary on the part of either of the parties, who is unable to defray them, shall draw upon [the paymaster of the territory] in favour of such advocate, to the amount of such expense; and so from time to time, as often as there shall be occasion, during the continuance of the cause.

ART. II. — In such draught shall be specified a particular of all the several purposes for which the money shall be deemed necessary by computation: and it shall be signed by the public advocate of the pauper, as well as by the judge.

ART. III. — [Four] times in every year [viz. on the quarter-day in each quarter,] the public advocates of the territory shall each deliver in to [the paymaster] an account of the disbursements of all monies so drawn for and received, distinguishing under the head of each cause, the monies received and disbursed on account of that cause; and stating each item of disbursement, according to the time on which, and the particular service for which it was made: and shall, at the time of delivering in such account, refund the whole of the balance which the account admits to be in their hands.

ART. IV. — If the adversary of the pauper on whose account money has been drawn for, as above, should be a solvent person, and it should be thought fit, by the judge, to charge him with costs, the amount shall be paid to the pauper's public advocate, and by him refunded to the [*paymaster of the territory*] at the next periodical time of settling their accounts.

TITLE XV.

OF TRIAL BY JURY.

ART. I. — Trial by jury shall be awarded no otherwise, than upon requisition made by some one of the sets of persons, at whose requisition appeal goes, according to Tit. VI. from the district court of appeal to the metropolitan court, in the cases not regularly appealable: nor shall requisition be made for that purpose, until the judgment of the metropolitan court has been sent down to the immediate district court, where execution, if awarded, is to be performed.

ART. II. — In the following cases alone, requisition for such purpose may be made :—

1. Where the judgment of the metropolitan court imports sentence of death, or indelible corporal punishment, or afflictive corporal punishment, or ignominious corporal punishment, or imprisonment, or banishment from the kingdom for a longer term than a year.

2. When the decision of the metropolitan court, respecting the principal question of fact, is opposite to the decisions of both the courts below.

ART. III. — In all cases where such requisition is admitted, the judgment of the metropolitan court, after having been publicly read in the immediate court, by which execution is to be awarded, shall be hung up, in conspicuous characters, in a particular part of the court appropriated to that purpose: and, to give time for the collection of signatures, [two] days, both exclusive, shall intervene in such case, between the hanging up of such judgment and the execution of the sentence, for a preliminary requisition, as according to Tit. VI.; and [seven] entire days more, reckoning from the time of presentation, for a definitive requisition.

ART. IV. — Upon a rehearing thus laid before a jury, all witnesses ought regularly to be re-examined: but as it may happen that, in a cause ever so strongly contested, there may be certain points, the evidence respecting which may appear to every one incontestible; and that the abode of the witnesses, relative to those points, may be in foreign parts, or very distant parts of the kingdom; the persons requiring may, in their requisition, distinguish such witnesses from the rest: in which case, the reading of the minutes of what passed on the examination of such witnesses at the former trial, shall stand in the place of their re-examination. And it is the duty of the judge to point out to the subscribers, when attending him with the requisition, all witnesses so circumstanced.

ART. V. — The manner of striking a jury shall be as follows :—

Forty-two persons shall be taken, by lot, out of the list of the active citizens dwelling in the town, or in any parish of which the church is not more than one great league distant from the town-house: the lottery being drawn by [*the keeper of the list,*] in the presence of both parties, or their representatives. Of these forty-two, the pursuer and the defendant shall each strike off twelve: the remaining eighteen shall be bound to attend·

of those who attend, an equal number shall again be stricken off by the parties (if there remain an odd one, that odd one by the judge,) till the number be reduced to twelve; these twelve shall sit upon the trial.

Art. VI. — The judge to try the cause shall be a judge of appeal of some one of the districts contiguous to that by the immediate court whereof the sentence would have been to be executed: the choice to be determined by a lottery, drawn in presence of the parties, or their representatives, by the judge of such immediate court: provided that the judge so chosen may sit by deputy, if he thinks proper.

Art. VII. — The punishment of a juror, for non-attendance, shall be a fine of [12] livres: and if the cause should be delayed for want of a sufficient number, the absentees shall, amongst them, be chargeable with the costs occasioned by such delay.

Art. VIII. — To prevent such delay, the number deficient may be supplied amongst the bystanders, to be named upon the spot, by the judge; and each person so named, if possessed of the qualifications of an active citizen, shall, unless objected to by either party, for specific and sufficient cause, be forthwith aggregated to such of the jurymen as appear, until the full number be completed.

Art. IX. — Persons who have once served on a jury, or attended for that purpose, shall stand exempted from taking their chance a second time, until the number remaining liable shall be reduced below eighty-five.

Art. X. — When the evidence has been gone through, the arguments heard, and the judge's charge delivered, balloting-balls shall be delivered to the jury, three to each: one black one, to denote conviction; one white, to denote acquittal; and the one half black and half white, to denote uncertainty. To give their votes, each shall secretly deposit, in one common box, provided for that purpose, the ball expressive of the state of his opinion, returning the two others, with equal secresy, into the common box, or bag, in which they were brought.

The defendant shall stand acquitted, if more white balls than one are found in the voting-box, or if there be not so many as seven black ones.

Art. XI. — If in the course of this rehearing any fresh matter comes out, tending to aggravate or extenuate the offence, the judge, in case of conviction, may vary the punishment accordingly: but if not, it is expected of him that he adhere to the sentence pronounced by the metropolitan court.

Art. XII. — At the trial, either party may object to any juryman, on the ground of partiality: and such objection shall be allowed or disallowed by the judge, according as, upon due examination, he finds reasonable. But every such objection shall be made, before the parties are admitted to strike off jurors, without cause assigned: nor shall either party be admitted to object to any juror, after the numbers have been reduced to twelve, unless he show, to the satisfaction of the judge, that good cause of objection, on his part, lay to all those whom he struck off, out of the whole number of forty-two, at the time of the drawing of the lottery.

Art. XIII. — Causes of partiality to warrant the challenging of a juror, may be any of those specified in Tit. IV., to which may be added, the case where there is reason to think that the juror challenged is, by reason of some party affection, prejudiced against the challenger. But the allowing or disallowing the challenge rests, in all cases, upon the discretion of the judge, determining upon the party's own examination, upon oath, and any other evidence that happens to be forthcoming upon the spot.

Art. XIV.—The metropolitan court may, if it thinks proper, order that, in the event of a requisition made for a jury, the minutes of the former trial, as well as of the proceedings in the appeals, shall be printed, at the expense, and sold for the account, of the district where the trial will be: in that case, the trial before the jury shall not come on till the minutes above mentioned have been printed, and a copy delivered to each of the eighteen jurymen remaining after the lottery has been drawn, and the jury reduced to that number, from forty-two, as by Art. V.

The jury, if, upon comparison of the evidence upon the trial before them with the evidence on the former trials, they should deem the requisition of a jury to have been frivolous, and made without reasonable cause, may, if they think fit, decree that the loss, if any, upon the publication of the minutes above mentioned, shall be borne jointly by the persons by whom the requisition was signed.

BENTHAM'S DRAUGHT

FOR THE

ORGANIZATION OF JUDICIAL ESTABLISHMENTS,

COMPARED WITH THAT OF THE NATIONAL ASSEMBLY, WITH A COMMENTARY ON THE SAME.

CHAPTER I.

TIT. I.— OF COURTS OF JUSTICE, AND OF JUDGES IN GENERAL.*

New Draught.— ART. I. The fountain of justice is *the nation, through the channel of the legislature.* Justice shall not be administered in the name of *the King,* or any single person. (1)

Committee's Draught.— Art. I. Justice shall be administered in the name of the King. No individual subject, no body-corporate, can have the right of causing it to be rendered in their names. (*a*)

Observations.— (1) (*a*) Justice to be administered in the king's name?— Why so? why in the *name* of any one? What is the meaning of administering justice in this or that person's name? Whatever is done in the way of justice, is done under the authority of some judge, either immediately by himself, or by some person under his controul. In this way, as in every other, whatever act is done by any man ought to bear the name of him who does it, that the title it has to obedience may be exactly known, and that he whose act it is may be responsible for the consequences. The introduction of the name of any person other than the judge, in acts expressive of the will or opinion of a judge, is of evil example, and tends to inculcate false and mischievous conceptions. The king's name ought least of all to stand as an exception to this rule: if the king's will is the *cause* of rendering justice, the inference is, that the king's will ought to be the *guide* in rendering it. To what purpose, then, begin a body of laws with a figure of speech, which has no precise meaning, which has no use, and which, if it had any effect, would have a mischievous one?

The idea of the king's being, as the lawyers

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* Whether my draught, had it come first, would have included under this head all the topics which have been embraced by the committee's draught, was not worth inquiry. Treading in their steps, I have made a point of exhibiting a succedaneum to everything in their plan that seemed susceptible of amendment.

The following short analysis of the contents of their draught will serve to show, at the same time, the arrangement I should have preferred.

The four first articles have for their subject, the source from whence judicial authority is henceforward to be derived: namely, a joint choice to be made by the body of the people and the king, not by a buyer and seller, as under the ancient system of venality.

The seventh, eighth, and ninth articles, are occupied in setting limits to the powers which in future are to be regarded as belonging to the judicial branch of government: as is the tenth, in establishing the independence of some of the classes of persons to whom those powers are to be entrusted, in as far as independence consists in the not being removable, except in the way of punishment.

In articles 5 and 12, is contained the first provision of any efficacy that is to be found, perhaps, in any European code, for letting the poor, that is, the bulk of the community, into a share of the protection afforded by the law; to wit, by abolishing court-fees and law-taxes, and admitting every man to plead in his own cause.

Articles 13, 14, 15, and 16, are employed in taking care that that share shall be an equal one; by the abolition of those iniquitous privileges, which gave to certain classes advantages over others, with regard to the facility of obtaining justice.

Article 11 has for its subject, the publicity of law proceedings, the surest and indispensable safeguard of all justice.

The two last articles, 17 and 18, are resolutions relative to business extraneous to the subject of this draught; namely, the establishment of a code of procedure in civil causes, and of a penal code.

Articles 2 and 3 are also resolutions rather than laws; the contents being re-enacted in detail, and superseded under subsequent heads. Many, if not most of the others, may perhaps be found in the same case. Resolutions should be marked as such, and collected together in the front of the body of laws to which they relate. They are a sort of scaffolding, which is of no use when the building is up, and ought not to remain mixed with it.

Source of judicial power, limits of judicial power, justice to everybody, and that equal justice: such are in brief the topics touched upon in this title.

At so small an expense of paper, seldom, if ever, have such large advances been made towards the point of perfection in any public line. This tribute of applause, suggested by a general view, could not in justice be withheld: what particular remarks I may have occasion to present, will wear a different complexion. Unhappily, where legislation is the subject, commendation is waste paper: it is only correction that can be of use.

term it, the *fountain of justice*, is a remnant of feudal barbarism; a branch of that poisonous tree which the National Assembly have already, to their immortal honour, rooted up.*

Under that system, that justice should be administered in the king's name was equally natural and proper: — Why? because under that system it used actually to be administered by him: under that system he used actually to sit as judge. It was equally natural and necessary he should do so: he of all men stood the best chance, though a precarious one it often was, of seeing his decrees respected: he, whose standard was followed in time of war, was the only man whose voice would be listened to in time of peace. In that short interval, justice was his great employment. Legislation there was scarce any: foresight, leisure, intelligence, power, every requisite for it, was wanting. Peace was kept, government was carried on, as occasion started, in the *ex post facto* mode of judiciary decrees. Administration there was next to none: no public purse: towns without government, except that of masters over slaves; no standing army; the idea of colonies and of a navy equally unknown; there was next to nothing to administrate. The king was maintained, and a considerable part of the small expense of government defrayed, out of the king's private estate.

As the business of legislation and administration increased, not to mention the more important business of luxury and pleasure, the king withdrew himself little by little from the judgment-seat: first, judges were called in to his assistance: by degrees he left them to sit and act by themselves, with liberty to make use of his *name*. In that state of things, there was a use and propriety in introducing the king's name into the proceedings of courts of justice. At this time of day, were a king to take a fancy to resume his long-abandoned station on the judgment-seat, would either Frenchmen or Englishmen permit it? They know better. Court is the region of favour: the very air of it is pestiferous to justice. Then why give the people to understand that the king is judge, when he is no such thing? Leave the rattle of fiction to such children in legislation as our lawyers. You, who to the virtue of youth, add the intelligence of manhood, what use can such toys be of to you?

If, for the sake of dignity, you wish at any time, in the language of your solemn acts, to throw a sort of veil over the personality of the judge, a better cannot be found than what all nations possess in the abstract term *Justice*: instead of *De par le Roi*, say *De par la Justice*.

The king, it will be said on the other side, is the executive power: it is in his name, therefore, that the decrees of justice ought to be executed; at least, if not originally promulgated. This comes of old confused systems and ill-imagined appellatives. The king is not, nor ever can be, in any proper sense of the word *execution*, the executive power: the power of the nation, in as far as it is employed in the execution of the decrees of judges against the opponents of justice, is not, ought not to be, cannot be, in the king's hand. It must be in the hands of the judges themselves, each acting within the sphere of his jurisdiction, and under the controul of his superior, up to the supreme court of judicature, which acts under no other controul than that of the representatives of the nation. Suppose, in a settled state of things, a man ordered into custody in a regular way by a court of justice at Antibes or Perpignan, and rescued by a mob. Is justice to be at a stand till information has been transmitted to the king at Paris, and orders received from him for a party of militia or regulars to assist in the recapture? The king of England is, at this moment, a despot in comparison of the king of France; yet even the king of England is not to this purpose, nor to any purpose but that of systematic language, the executive magistrate. Every man almost who bears the name of a judge, as well as several who do not, may command for this purpose the whole power of the country within the limits of his jurisdiction. The chief-justice of England commands to this purpose the power of all England: citizens, militia, regulars, everything; even navy, I suppose, if there were occasion: the king cannot to this purpose command a single man. Charles II. ordered a man into custody, for what, had the order been issued by a judge, would have been deemed good cause: the order was adjudged illegal because it was the king's. If an order signed by the king of England were to be delivered to a gaoler anywhere to release a man under arrest for debt, would it be held legal? No certainly. But if justice must be executed without the king, and even in spite of the king, in what sense can his power be termed, to this purpose, the *executive?*

The truth is, that, in any intelligible sense of the word *executive*, he is not the executive power to *any* purpose. What is it that he executes? Not the decrees of the legislature, or those of the ministers of justice against internal enemies: those decrees, as we have just seen, are executed by others, without his intervention, and in spite of it. Not the decrees of the legislature against external adversaries: the legislature of one country does not make laws to be obeyed by the inhabitants of another; it does not make laws for enemies There are no laws,

* Decrees of August 1789, and February 1790.

then, for him to execute against enemies. In his hands, indeed, is placed the force destined to act against foreign enemies: in his hands is vested the administration of that force, in all its various branches. Say that it is in virtue of a law that he makes war against the enemy. He then executes that law in a certain sense if he obeys it. But how is the law, then, executed? only in as far as it is obeyed: but not in the sense in which a law is said to be executed *upon* or *against* those who withhold or refuse obedience. A man, by obeying a law requiring his obedience, without waiting for its being executed *upon* him for disobedience, may, in a certain sense, be said to execute the law: but does this render his obedience an exercise of executive power? If it does, every man is the executive power, and king and subject are the same thing. The king's power, then, may be termed, if you please, the *administrative* power: but in what sense is it the *executive?*

Words in themselves are of no sort of consequence; but when they are made the foundation of practical institutions, then surely their propriety becomes worth investigation. Whether the practical institutions grounded on this verbal theory are right or wrong; and whether, if wrong, the error is material or otherwise, may be seen under the next article.

New Draught.—Art. II. The judges shall in general be elected by the persons subject to their jurisdiction; and that in manner hereinafter specified. (2)

Committee's Draught.—Art. II. The judges shall be chosen by the proper subjects to their jurisdiction, in manner and form hereinafter to be mentioned. The judges shall be appointed by the king, upon a presentation to be made to him of two candidates chosen for each vacant office. (*b*)

Observations. — (2) (*b*) The share here given to the king in the choice of the ministers of justice, seems neither consistent with utility in the abstract, nor with received principles.

Were the matter never referred to the choice of the people at all, a choice made by the king, or rather in the king's name, might pass for that which it might be presumed the people *would* have made, had it been put to them to make a choice. A presumption of that nature, whatever there may be in it, can under this arrangement no longer be held up. Two candidates are presented to the king by the people: one who, it is proved, is the most acceptable to them of the two; the other, who is the least acceptable. Shall the king's minister have it in his power to force upon them the one whom they like least, depriving them of the one who has been declared to have their preference?

What is the good that is to result from so evil an example? As a means of preserving the people from an imprudent choice, the efficacy of any such option can be worth but little. If, in virtue of any cause whatsoever, a body of people are likely to make one foolish choice, what should hinder the same people from making two? Satisfy yourself, that the choice of the people in this instance ought not to outweigh that of the king's ministers; and it must be by such arguments as ought to satisfy you, that, in the first instance at least, the appointment ought not to be left in any way to their choice. To be consistent, you should give the *nomination* to the king; and if you give the people anything, the *option* only to them. In this way the choice of the people is exposed to open contempt, and the security gained by it is not worth a straw. In the mode I have ventured to propose — (see Tit. III. § 1 & 5) — the highest security is given, and the respect due to the choice of the people preserved inviolate.

As to the person of the king, it is on all accounts plainly out of the question. I ask not what the king, but what the king's minister for this department, can know about the character of two persons chosen by the people from among themselves, in a distant province, more than the people themselves know? Whatever judgment is to govern in this business, will have been formed, not by the king's minister, not by the keeper of the seals, for example, but by some inostensible whisperer, some *intriguant* about the keeper, who has connexions in the province.

The most considerable effect such an arrangement seems likely to have, is that of strengthening ministerial influence. It will concern every candidate to be well at court: that, if first, he may not be rejected, and that, if last, he may be preferred. This property, howsoever it might recommend it in England, quadrates but ill with the principles that seem to be universally received in France. It is the essential property of *command* to be environed with a sphere of *influence* much more extensive than its own. The king must have *command:* therefore he cannot be divested of *all influence.* But the less influence he has as such, the better. Here we have a department without any command, consisting of nothing but influence. And this department is not so much as a remnant of the old system: it has not usage and antiquity to recommend it. The King of France is not in the use of having anything to do with the appointment to the provincial offices of justice: they have been always bought and sold: the seller and the buyer between them have chosen the buyer.

Justice, I have already said it, was the proper business of a feudal king. Justice, even the naming of the persons who shall

administer it, is no fit business for a modern one. The military department — that department of which the measures depend so much for their success upon promptitude, and the complete combination of a vast multitude of scattered instruments — the military department is the proper, and only proper field of action for a monarch. It is essential that every branch of that department, everything that may be necessary to complete a body of force destined to act against an enemy, should be at the disposal of a single hand. War-office, ordnance-office, admiralty-board, navy-board, fortresses, dock-yards, even treasury-board, to the amount of the sums, and with restriction as to their application, provided by the delegates of the nation — everything of that sort, ought to be at his devotion. But we want no king, to sell us to foreign powers, to throw away our money in buying the useless and pernicious assistance of foreign powers, to make treaties in our name without our knowledge, to insult weaker nations, and dictate laws to them on pretence of mediation, or to plunge us into war before we have any suspicion of the cause. As little do we want a king at the Louvre or St. James's, to tell us what persons are best deserving of our confidence in Northumberland or Provence. — When I search for the advantages expected from this power among the details of its application, my embarrassment, instead of being relieved is increased. Where the election is lodged in the hands of picked men, men thought worthy to be entrusted with the choice of the members of the administrative bodies, and of the sovereign legislature, or men considered as still more select, and still better entitled to confidence; the choice made by the people by these chosen electors is put, I find, under subjection to this over-ruling power. Where the election is thrown open to the lowest order of citizens, to those whose contributions do not amount to more than half a crown in the year, to those who are but the electors of the above-mentioned picked electors, the choice thus made is left without controul. Where ignorance is least apprehended, an expedient is employed for correcting the choice that may be made by ignorance: where ignorance is most apprehended, the corrective is withheld.

Nine sorts of courts are comprised in the institution, exclusive of the High National court constructed upon principles too peculiar to be brought here into the account. In five of these instances,* the appointment follows the general rule laid down by this article: in the other four the rule is departed from,† and the choice of the electors stands uncontrouled. Of these exceptions, the first that presents itself is that of the canton court, filled by a single judge, under the denomination of a *judge of the peace*. This example augments my embarrassment still further. Where the judges are to sit in bodies of five, ten, twenty, and six-and-thirty, each individual capable of making up for any deficiency that may be exhibited by the unfitness of another, the remedy provided against a bad choice is applied: where the person chosen is to act alone, the remedy is withheld. And to the court of this judge, as well as to the other courts, is given a portion of jurisdiction exempt from appeal.

Will it be said, that the class of causes in which the judge is exempted from controul is the very lowest only in the scale of importance?—causes, I mean, of not more than fifty livres value? This indeed is what I fear: for, according to my measure, among causes merely pecuniary, these are precisely those which stand highest in the scale. But of this under the next title.

The complication introduced by this system of royal controul, would, of itself, form a sufficient ground for rejecting it, unless some very unequivocal advantage could be shown to flow from it. Complication infects the general mode chalked out by the general article. Further complication results from the discordance between the instances in which the general rule is observed, and the instances, almost equally numerous, in which it is departed from. One useless law renders another necessary: for the provision, though redundant, is defective. Along with the choice of two candidates, a negative is unawares given upon both; and there it must continue, unless more laws are made to take it away. Should the minister dislike both the elected candidates, and withhold the royal option with or without pretence of hesitation, the impediment might last till they both died, for anything there is in this code to put an end to it.

The reasons, which plead in favour of the king's suspensive power in matters of legislation, apply not in any degree to this share in the creation of judicial power. To exercise that *suspensive* power, would be to say to the agents of the nation—"I suspect your maturer judgment will be different on this head from your present opinion:" or "I suspect that, were the opinion of the people for whom you act to be known, it would be found different from yours." To exercise this *elective* power,

* 1. The district court.
2. The district court of administration and revenue.
3. The department court.
4. The superior court.
5. The supreme court of revision.

† 1. The canton court.
2. The reconciliation office of the district.
3. The court of the judges of trade.
4. The court of police formed by the municipal councils in towns.

would be to say, "The wish of the people, I see, is to have Paul to judge them; but I, disregarding their wishes, choose they should have Peter."

For this, as for every other act of kingly power, the committee, I suppose, mean to have some person or other responsible. But what minister would have the courage to take upon himself the responsibility of such a choice?

God forbid that for this or for anything else, I should accuse the committee of intentionally betraying the cause of the people. Policy should forbid, though truth did not, so ungenerous an imputation. Their offences against popularity are but peccadillos, in comparison with mine. To confess the truth, even in this very instance, they have gone farther on the popular side than perhaps, without the encouragement of their example, I should have ventured to have gone. I have been distressed for years what to do with the appointment of judges: whether to give it the people; or to *give* it (or as in England it would be, to *continue* it), to the king. It might be a matter of some difficulty to point out any specific mischief which has resulted in England from this part of the king's prerogative as it stands at present. But on this point, neither do the past usages nor the present views of the two kingdoms afford any parallel. The king of England has always had the nomination of almost everything that goes by the name of a judge. In this line, except in an insignificant office or two, such as that of coroner, the people know not what it is to choose. They might choose for chief-justice an Hottentot, or an ourang-outang: and our profound constitutionalists, who worship precedent as the test of excellence, would expect no better choice. To us, a system of local judicature, distributing justice upon the spot, in all its branches, is new, not only in practice, but in imagination. With us, no man has yet been found bold enough to insinuate, that fifty pounds may be too high a price to pay for five shillings, or four hundred miles too far to go for it. While the trade of justice is in a manner confined to Westminster Hall, the king at St. James's has not far to look in order to choose the dealers.

It is surely a bold experiment this of trusting the people at large with the choice of their judges: the boldest, perhaps, that ever was proposed on the popular side. My thoughts were divided betwixt the king and the representative assemblies. I could scarce think of looking so far down the pyramid, as to the body of the people. But now that the committee has given me courage to look the idea in the face, I have little fear of the success. My wish, however, is to see the experiment fairly tried, in its simplest form, and not clogged by a temperament in which I see the mischievous effects I have been stating, and in which I can descry no use.

What I accuse the committee of, is the instituting this fund of corruption, not for the sake of the king, not for the sake of ministers, but for the sake of a *word:* and I retract immediately if their own candour does not plead guilty to the charge. The king is the *executive* power: justice is a thing which requires to be *executed;* being a thing to be executed, it must be *executed* by *him.* Something at least *he* must be seen to do toward the *execution* of it: and this is the way in which his interference will do least mischief.

New Draught. — Art. III. No office conferring judicial power, *or the exclusive privilege of ministering by particular services to the exercise of such power,* shall be created *by the sole authority of the king for any purpose, much less* in order to be sold.

Committee's Draught.—Art. III. No office conferring judicial power can henceforward, under any pretence, be created to be sold. (*c*)

Observations. — (3) (*c*) The addition of the passage distinguished in my draught by italics seems necessary to fulfil the intention of the committee. Jailors, clerks, bailiffs, criers, &c. are within the reason of the law; they are not within the words of the committee's draught.

In condemning the venality of judicial offices, without limitation — consequently by whomsoever sold, on account of whomsoever, and on whatsoever terms — the committee goes beyond the mark, and ties the hand of the legislature, as far the hands of a legislature can be tied. In a paper on the *Patriotic Auction,* proposed under Tit. III. § 2, of my draught, as an expedient for saving something of the vast expense of so many judges' salaries, preserving the right of election inviolate, I state what the real mischiefs of venality were upon the old plan, and show that mine stands clear of them.

New Draught. — Art. IV. Justice shall be administered gratis. Provision shall be made for the ministers of justice by salaries. *All exaction, or acceptance of fees, by persons any way concerned in the administration of justice, is hereby declared illegal.*

Art. V. *All stamp duties or other duties upon law proceedings are hereby abolished: and all laws made to ensure the collection of such duties, are so far forth repealed.* (4)

Committee's Draught. — Art. IV. Justice shall be administered gratis, and appointments for the judges shall be provided to a sufficient amount, proportioned to the dignity of their stations, and the importance of their functions. (*d*)

Observations. — (4) (*d*) So much good has seldom been proposed in so few words.

have taken upon me to subjoin reasons for the measure, principally with a view to the country in which it will be scorned, but not altogether without an eye to that in which it will be crowned. If it be desirable that good laws be established, it is not altogether superfluous that it should be generally understood on what accounts and to what a degree they are so. Power gives existence to a law for the moment, but it is upon reason that it must depend for its stability. The discussion being thought too long for a note, forms a separate paper.

The concluding part of this article, as it stands in the committee's draught, is rather a *resolution* than a *law*. It might be as well perhaps to omit it in this place, and add it to the string of resolutions with which this title concludes.

The concluding part of the fourth article in my draught, together with the fifth article, seemed necessary to give complete effect to the general provision, and place the intended extent of it beyond the reach of doubt.

If these taxes are abolished, a list of the laws therewith abolished should be subjoined. This is a sort of appendix that should be subjoined as soon as possible to every decree of the new legislation, as well in order to obviate doubts, as in order to prune off so much of the dead wood, and reduce the bulk of the body of the law.

New Draught. — Art. VI. The judges have no share in legislative power. Appointed for the express purpose of enforcing obedience to the laws, their duty is to be foremost in obedience. Any attempt on the part of a judge to frustrate or unnecessarily to retard the efficacy of *what he understands to have been* the decided meaning of the legislature, shall be punished with forfeiture of his office. (5)

Committee's Draught. — Art. VI. The judicial power being subordinate to the legislative, the courts of justice shall not usurp any of the functions of the legislative body, nor hinder nor *retard* the execution of its decrees sanctioned by the king, on pain of forfeiture. (*e*)

Observations.—(5) (*e*) In these nine articles from the 6th to 15th inclusive, I have endeavoured to embrace the subject-matter which the committee seem to have had before their eyes, while occupied in framing the 1st, 6th, 7th, and 8th articles of their draught: but to a somewhat greater extent, and with some difference as to the means made use of.

Three objects seemed to require attention on this occasion: 1. The setting up a bar to usurpation of legislative authority on the part of the courts of justice: 2. The providing a remedy against inconveniences which might arise in cases unforeseen by the law from the too rigid and liberal execution of it: and 3. The settling a plan of correspondence, by means of which the legislature might put itself in possession of such means of judging of the conformity of the laws to their design, as the opportunities afforded to the judges by local situation and particular experience, must render them peculiarly well qualified to supply.

In the provision to be made for the first of these objects, some attention seemed necessary, in order to avoid throwing down, by a side wind, the whole fabric of what is sometimes called the unwritten law: — the collection of rules of law deduced upon occasion from the observation of the course taken by the courts of justice in their decisions. This bastard sort of law cannot, it is true, too soon be made to give place to the legitimate; but there must be some law in the country in the meantime. A judge, in as far as his decision in one case serves as a rule in a subsequent one, is in effect a legislator: and a large proportion of what goes by the name, and has the effect of law, has, in France as well as England, no other origin than this. In refusing to these new judges all share in legislation, it may be necessary not to extend the stigma of reprobation to the *unwritten* or *judiciary* law, the result of those acts of indirect legislation, which have been exercised by their predecessors.

In virtue of decrees already passed by the assembly, articles of law, deemed other than constitutional ones, are presented to the king for his consent, and sanctioned by him. Articles of law deemed constitutional, are declared not to require the king's sanction. In this very draught of the committee, are contained many which I suppose will be deemed to come under the latter denomination. A judge disregards an article of constitutional law, not sanctioned by the king — is it the design of this article to leave him at liberty so to do? certainly not: then why confine the obligation to the decrees "*sanctioned by the king?*"

By the word *retard*, employed as here, without any modification annexed to it, I doubt the committee will be found to have gone beside the mark in some degree, to have put the courts of justice into an embarrassing situation, and to have counteracted their own views. The retardation they meant to condemn was, I suppose, that which would be the consequence of an address to the people, or, what might come nearly to the same thing, an address to the legislature, circulated among the people, pointing out a law newly issued, as unfit, on some account or other, for execution. But, to take time to consider of the true meaning of a law, when the execution of it is called for by an action grounded upon it, is also to *retard* the execution of it. This is what can hardly, I think, have been meant to be included under the

censure; and yet for this, according to the letter of the provision, a judge would stand liable to forfeiture.

New Draught. — Art. VII. ***But rules of law, derivable from decrees of judges and customs of courts in times past, shall still be in force, so long as they remain unsuperseded by acts of the legislature.***

Committee's Draught. — Art. VII. The courts of justice shall be bound to transcribe purely and simply upon their registers, the laws which shall be sent to them, within three days after they have received them, and to publish them within eight days, on pain of forfeiture. *(f)*

Observations.—*(f)* The declared *object* of this provision is to prevent the new courts of justice from exercising, as some of the old ones did, a negative upon the acts of the legislature; the *tendency* of it, as far as it tends to anything, is to enable them to assume this negative. Require that such or such a man shall do so and so, before an instrument of any kind shall begin to have validity, you give that man, how inconsiderable soever in other respects, a virtual negative upon the power exercised by that instrument. Upon the requisition made in the present instance, the construction that will naturally be put is, that till the act required be performed, the validity of a law is not to commence; for such, it seems, has been the case hitherto in France.

A decree will, upon this plan, in every one of several thousand judicial territories, begin to be in force at so many different periods, according to the length of the instrument, and the probity or improbity, the diligence or negligence, the good or bad health, of various sets of persons: — of the judge, of the register of the court, and of the copying clerk by whom, under the immediate inspection of the register, the business is to be done.

Take a written copy of a printed paper? Why? Of what use can it be when done? And this in every one of so many thousand courts! To what purpose this enormity of expense? Wherein has the art of printing offended, that justice is to disdain to avail herself of its assistance?

At what period, too, is the obligation to obedience to commence? At that of the publication, I suppose. From what period, then, is the week to be reckoned, at the end of which the publication is to take place? — that of the receipt of the original, or that of the completion of the copy? From the latter it should be, if the copying were of any use. What if a single decree amount to a large volume, as may be the case with the promised penal code, and the promised code of procedure? Will the judges, with all their power, find a man who shall copy it into the register-book in eight days?

Oh, but in France a law is no law until it is registered: nor anywhere but where it is registered: and to register a law is to copy it into a register-book. And so, because laws made by a despot were to be put out to copy, that parliaments might have time to see whether there was nothing to find fault with, no loop-hole at which they might steal in their negative in legislation, laws are still to be put out to copy, now that there are no despots, and no parliaments.

There was a time when this copying business was of real use. — Why? Because there was a time when printing was unknown. It is the delight of lawyers to go on plodding in paths which reason has never visited, or having visited, has deserted. But is it for the legislature to catch this propensity, and convert it into obligation?

Oh, but printed copies of laws may be forged — they have been forged. Standard instruments, therefore, are necessary to detect the forgery. True: but what written copy can be so good a standard as the printed original? The true standard at each court of justice is the printed paper which the judge of the court receives from the proper officer at Paris. Let each sheet of that copy, or, to guard against interpolated leaves, each *leaf*, be numbered and signed by him, *cote et paragraphe*, in testimony of its authenticity. This will be the work of a few minutes: and by this work of a few minutes, the purposes will be better answered than by the proposed work of as many days.

One would think, from this article, that a sort of tacit persuasion had got possession of men's minds, that laws, after they had passed the hands of the legislator, could not begin to take effect till after somewhat or other had been done for that purpose by other people. The king, that he may have something to do in the business, is, besides his previous consent or acceptance to the law while in manuscript, to take charge of the printed copies for the purpose of dispersing them: as if a clerk to the assembly could not as well put a packet into the post, as a clerk in an office under the king. The courts of justice, that they may have something to do in the business, are to set clerks to work upon the useless operation of copying a printed paper.

The separation of the instrument containing the king's sanction, from that containing the decree of assembly to which it applies, is attended with two bad effects: — it gives ministers an indirect and insidious negative, in addition to the one avowedly belonging to the king: and it loads the text of the law with the rubbish of letters-patent.

Were the decree to run in the joint names of the king and the assembly, as in the British statutes, and were the king's sanction given by his seal and signature applied to the

original instrument of the decree, that instrument never quitting the custody of the assembly, and the business of circulation committed to the assembly's printer, or some other person under their immediate authority, a deal of chicane, and negligence, and anxiety, and time, and money, and paper, might be saved.

It is highly necessary that at all times, and in particular, immediately after the passing of a new law, means should be used for impressing the contents upon the minds of those whose conduct is to be governed by it: and the anxiety testified by the committee on this head is highly laudable. But what measure so simple or so effectual, as to send by the post a copy to the ecclesiastical minister of every parish, under a general order to read it to the congregation the next church-day, or the two next church-days, *au prone*, immediately after divine service?

In England, the business of promulgation is a very simple affair. In the body of every act of parliament, a day is specified in which it shall be considered as being in force. Nothing is done to circulate it by king, or judges, or any body else: but a copy is given to the king's printing-office, where it is printed in an obsolete obscure type, and inconvenient folio form, and sold, as may be expected under a monopoly, at a dear price; and there it lies for the use of any one that has money to spare to buy it, and thinks it worth his while to do so. Every man is then supposed to know, and to understand the law: juries excepted, who, when they have taken upon them to pronounce a man *guilty* of having violated the law, are held not to have decided upon the law, it being impossible they should understand it.

New Draught.—Art. VIII. No judge has any power to make general regulations; *not even relative to the mode of procedure in his own court.* (6)

Art. IX.—*But should any case arise before a judge, in respect of which it appears to him that the legislature, had the same been in their contemplation, would have made a provision different from that which the letter of the law imports, he is hereby authorised, and even required, so to deal therein as it appears to him that the legislature would have willed him to do, had such case been in their contemplation: taking such measures withal, whether by exacting security, or sequestration of goods or persons, or otherwise, as shall be necessary to prevent the happening of any irremediable mischief in either event, whether the legislature abide by the law, or alter it.**

Art. X.—*The suspensive power hereby given extends even to such laws and other acts of authority as shall have issued from the National Assembly, or from any subordinate authority, at any period posterior to that of the convocation of the present National Assembly: and it may be exercised with still less reserve with regard to such former laws and rules of law, as, though not expressly abolished, may appear unconformable to the principles manifested by the National Assembly, and especially to those contained in the declaration of rights.*

Art. XI.—*Provided always that the judge, as soon as possible after the case calling for the exercise of such suspensive power has presented itself to his notice, shall make report thereof to the National Assembly.*

Art. XII.—*Copies of such report shall also be sent to the several courts of justice to which his court is subordinate: so that the dispatching of the original report be not delayed on account of the dispatching of such copies.* (7.)

Art. XIII.—*In such report shall be contained*—

1. *A statement of the matter of fact which has happened to call for the execution of the law.*

2. *A quotation, with proper references, of the passage of law in question.*

3. *A statement of the mischief which in his conception would ensue, were the letter of the law to be observed.*

4. *A statement of the course provisionally taken by him for avoidance of such mischief, in pursuance of the power given to him by Art. IX.*

5. *To such report he is at liberty, and is hereby invited, to subjoin a note of such alteration in the text of the law, as appears to him most proper for guarding against the mischief in question for the future; whether such alteration consist in defalcation, addition, or substitution; pointing out the very words in which the passage in question, after the alteration suggested, ought to stand.* (8)

Art. XIV.—*The true and only proper object of inquiry, in the exercise of this suspensive power, as far as it regards laws posterior to the convocation of the present National Assembly, is, not what* ought *to have been the intention of the legislature in the case in question, but only what would have been so, had the same been present to their view.*

Art. XV.—*All judges and other ministers of justice are also hereby invited to make report, at any time, of any inconvenience which appears to them likely to ensue from the literal execution of any article of law, even although no case calling for such execution shall have yet arisen: as also to propose questions relative to the import of any passage in the law, which may have appeared to them ambiguous or obscure.*

Committee's Draught.—**Art. VIII. The courts of justice have no power to make regulations; they shall address their repre-**

sentations to the legislative body as often as they shall deem it necessary *either to interpret the doubtful signification* of a law, or to enact a new one. *(g)*

Observations.—(6) *(g)* The committee, I observe, in the general interdiction passed upon regulations made by judges, makes no exception in favour of regulations relative to the mode of procedure, made by those magistrates, each in his own court; and it seems to have done very right. Were this permitted, the modes of practice in the different courts would gradually diverge; diversities would gain ground in each, and complication in the whole. Judges, too, from caprice, or regard to their own ease, might clog the system of procedure with unnecessary and unbending restrictions and obligations.

In England, courts of justice, at least the more considerable ones, have always holden this power within their competence; though of late they have exercised it but sparingly. The public, as things are circumstanced in England, four or five great courts exercising joint and immediate jurisdiction over the whole country, owes them little thanks for this reserve. The practice, as to the main part of it, has been settled somehow or other between the subordinate officers and the attornies; nobody knows when, nor by whom, nor how, nor for what reason. It is accordingly, in the language of lawyers, like everything else that has been done by lawyers, "the perfection of reason;" that is, different in all the different courts, repugnant in every one of them to the ends of justice, but extremely convenient, and not a little beneficial to all parties concerned, except the suitors.

The phraseology of the committee's article, where it speaks of the power of interpretation, seems not to be altogether so clear as one would wish to find it.

Interpreting the law, is what, in a certain sense, a judge, as well as everybody else, must always do, as often as the authority of it is appealed to, and a man is called upon to act accordingly: *Interpreting the doubtful signification of the law* is what he cannot do but where the signification of it is doubtful. So long as the signification of a law appears doubtful to a man, he can neither interpret it himself, nor avoid thinking it necessary that somebody else should. In this case, if it wears the same appearance in the eyes of the legislature for the time being, the best thing they can do is, not to give a separate interpretation of the law, but to revoke it, and promulgate a new one, which shall stand clear of the difficulty. As the law cannot compress what it has to say into too small a compass, substitution and even defalcation, wheresoever it will equally well express the meaning, is much better than addition.

Interpretation, when spoken of in regard to any species of composition but a law, means attributing to it the sense of which a man really conceives it to be expressive. *Interpretation* in France, it seems, as well as in other countries where the law language on this head is taken from the old Roman law, means passing another law relative to the same subject-matter, with or without the deceit of pretending to attribute to the former a sense which a man is conscious does not belong to it. In the former sense, that is, in the original and natural sense, every subject not only has a right to interpret the law, but is forced to do so, in as far as he is bound to square his conduct by it: in the technical sense, if the right of *interpreting* the law belongs to any man, that man is a legislator, and a legislator of equal authority with him who made it.

* An example, quoted by Puffendorf and other writers, of a law actually established in some Italian state, will serve to make this distinction clear, and at the same time to manifest the necessity of such a suspensive power as is proposed:—

Whosoever draws blood in the streets shall be put to death.

I put three cases upon this law:—

1. A surgeon, seeing a man drop down in a street in a fit of apoplexy, lets him blood and saves his life. Ought he for this to lose his own? Yet such must be the inevitable consequence of a strict execution of the letter of the law.

2. A man, waylaying his adversary, sets upon him in a street, and strangles him without shedding a drop of blood.

3. A man, waylaying his adversary, and meeting with him in the street, draws blood from him, by giving him a stab, which however does not prove a mortal one.

The judge possesses a suspensive power given him in the words proposed in my draught: What courses ought he respectively to take in the above three cases?

1. In the case of the surgeon, he ought to collect all the evidence, staying judgment till after the decision given by the legislature in answer to the report; and, in the meantime, taking such security as appears to him sufficient for the defendant's forthcoming, in order to abide the event of such decision.

2. In the case of the strangler, he ought to proceed in the same manner: but in this case, the security required would naturally be stronger than in the other.

3. In the case of the stabber, he ought to proceed to sentence and execution. He might indeed think it improper that a bare attempt to kill, or perhaps merely to wound, with a special care not to kill, should receive as heavy a punishment as actual murder. But

this case is one which the legislature, it is plain, must have had in contemplation, and they have decided otherwise. The two other cases it seems equally plain they had not in contemplation. In these cases, then, to exercise the suspensive power, would be only to seek out, and minister to the intention of the legislature: in the third case, it would be to censure and controul it.

Put now the same three cases, and let the article as it stands in the committee's draught be the law. What is the consequence? Let justice go on in its ordinary train, the benevolent surgeon must be put to death, and the murderous assassin acquitted, before any answer arrives from the legislature. A conscientious and courageous judge might perhaps take upon him to exercise a suspensive power in two such cases, though not given him by the law. Perhaps so: but all judges may not be conscientious: nor are all conscientious judges courageous: and whatever good quality this or that judge may chance to possess, affords no apology for the defectiveness of a law. Whatever power the law means to permit, it ought openly to allow. Connivance pre-supposes and establishes arbitrary power.

No body of laws ever yet made its appearance anywhere, which does not afford ample field for such a suspensive power. At the commencement of a new order of things, such as that which is establishing in France, the calls for such a power must be particularly abundant. The new laws, being made piecemeal, must leave a multitude of cases unforeseen and unprovided for: and till the new system is completed, the ambiguous state of the old body, half living, half dead, must increase the multitude of doubts and difficulties.

A suspensive power thus given may possibly be productive of some abuse. It is just possible. But without it, abuse is certain and universal. Distress to individuals, and that to an amount not to be conceived: open disobedience on the part of the judges to the legislature; and that in the infancy of its power: such is the only alternative. Shall disobedience be foreseen and wilfully allowed? Thus to allow it, is to invite it.

Reports of this sort pouring in upon the legislature from all the courts will take up a good deal of its time. Probably: but the inconvenience cannot be avoided but at the expense of a worse: nor is the door which the committee's article opens to it a hair's breadth less wide. Both laws expose the feelings of the legislature to be wounded by tales of distress. The difference is this: the one remedies the mischief, and then tells of it; the other tells of it without remedying it.

Oh but, says the committee, the representations you speak of are not those which we mean to allow. When we speak of judges, we think of our old parliaments. When was it the parliament used to make their representations, if they chose to make any? When? why, before they registered it, to be sure. When they had registered it, they had *passed* it; it was then their law: do you think they would have found fault with their own law? No, no: our representations have nothing to do with yours. Have not they, say I? So much the worse. Observe the task you have given to your judges. What the legislator professes to understand, they are to teach him: what he wants to know, but can know from nobody but them, they are to keep to themselves. They are to speak of everything they fancy, and of nothing that they see: they are to report from imagination, and not from evidence.

(7) A plan for giving to the conveyance by the post, the exactness requisite for this and all other branches of judiciary correspondence, is contained in the draught of a code of procedure, designed to form a sequel to the present publication.

(8) All human laws will have defects: all new ones more particularly: defects to be remedied must be pointed out by somebody: and who so proper to point them out as the persons engaged by duty in the study of them, and by practice in the observation of the incidents that bring them into notice? No legislator can as such possess opportunities of this nature equal to those which must present themselves to every judge.

In England, no invitation of this sort was ever given to the judges. Those magistrates, however, have always had the right of making representations of this sort, since, under the name of *petitions*, it is no more than what all subjects in general have enjoyed. No nation hitherto whose laws have such large features of excellence in them as those of England: yet none, perhaps, whose laws are more abundant in particular and very gross defects. No judge can well sit on the bench for a day together without being witness to numerous exemplifications of them. In one of the houses of legislature, all the judges have always had seats, and at all times some of them have had votes. Yet who ever heard of a representation of this sort spontaneously given by a judge to the legislature? and how many instances do the annals of parliament afford of bills brought in by law-lords for the amendment of the law? Is a bill of this sort attempted to be stole in by an unlearned hand? learned eyes are not wanting for spying out the defects—not of the law, but of the bill which seeks to remedy it: and scorn is the reward which public spirit gets for its temerity.

Of the very few judges who in our time have betrayed any symptoms of a suspicion

that the law could be in any respect better than it is, or of a wish to see it so, the most eminent have gone to work, as if their object were to render reformation odious. Reformation of the law, by the commissioned legislator, is indeed, what Lord Bacon styles it, an heroic work; by the judge it is usurpation, despotism, and confusion.

Provisions to the effect above mentioned would be insufficient to the end, without some others, of which, as not belonging properly to the present title, I shall content myself here with giving a general intimation.

Provisions for the elucidation and improvement of the laws by the help of lights, suggested by persons other than judges; in a word, by the citizens at large:—

1. General liberty to any subject to make communications of the same sort which the judges are invited to make.

2. Special liberty to persons wishing to engage in a *contract* of any kind, whether of the nature of a pact or of a conveyance, of the validity or invalidity of which no declaration sufficiently explicit is given by the law, to propose questions to the legislature relative to such validity. Questions of this kind might pass through the hands of the several ranks of judges, who, if they thought proper, might adopt them by their signature, and might even on certain conditions be authorised and required to give a decision, which should be binding at the end of a certain time, if not annulled by the legislature.

In England, wills and conveyances are made, agreements entered into, on which the fortune and condition in life of families are built, and afterwards, at ten, or twenty, or thirty years end, comes an *ex post facto* decision, which overthrows everything, and reduces them to beggary. Courts of justice can take no cognizance of a question that does not come before them in the course of a cause, and if an amicable cause were instituted for the sake of getting a decision on a question, before the event that called for it had taken place, it would be a crime punishable by law. Multitudes are thus doomed to inevitable ruin, for the crime of not knowing a judge's opinion, some ten or twenty years before the question had ever entered into his head. This confusion and injustice is of the very essence of what in England is called *common law*—that many-headed monster, which, not capable of thinking of anything till after it has happened, nor then rationally, pretends to have predetermined everything. Nebuchadnezzar put men to death for not finding a meaning for his dreams: but the dreams were at least dreamt first, and duly notified. English judges put men to death very coolly for not having been able to interpret their dreams, and that before they were so much as dreamt.

The rescripts produced by the questions put by Roman citizens to Roman emperors, gave nothing but a load of rubbish to the law. Fabricated in the dark, by some unknown scribe of a despotic sovereign, they remain in the rude state in which they were emitted, without being melted down into the text of any general law. How should they have been? No such law was in existence. Such will not be the fruit of questions put by the free citizens of France to their enlightened legislature.

3. A committee to receive communications of this sort, to publish such as they think worth publishing, and to propose to the assembly any such alterations as they think proper to be made in the text of the laws, in consequence. Right given to the author of any rejected communication to have it printed and subjoined in form of an appendix to the authoritative collection, upon depositing the expense.

Other provisions relative to the elucidation, improvement, and preservation of the text of the laws, diverge too far from the subject to be mentioned here.

New Draught.— Art. XVI. The subordinate representative assemblies, in the exercise of the powers of administration, and *subordinate legislation*, lodged in their hands by the supreme legislature, are [not?] accountable to the judicial power. The members of them cannot therefore be punished, or cited to appear before it, for any act done by them in their quality of members. *Obedience to an act of any such assembly, acting within the sphere of the authority committed to it by the sovereign legislature, is to be enforced by the courts of justice in like manner as to an act of the National Assembly itself. But for that purpose, it is necessary that the courts of justice should take cognizance, upon every occasion, of the question, whether in such instance the subordinate assembly has or has not confined itself within its proper sphere, and decide accordingly upon the validity of its act.* (9)

Committee's Draught. — Art. IX. As the judicial power is distinct, and ought to be kept separate from the power of administration, the courts of justice have no power to take any sort of part in matters of administration, nor to *give any sort of disturbance* to the operations of the administrative bodies, nor summon before them the members thereof, for matters done in the exercise of their functions, on pain of forfeiture. (*h*)

Observations. — (9) (*h*) In speaking of the subordinate representative bodies, care, I observe, seems to be taken, to speak of their functions as confined to the head of *administration*, without any share in *legislation*. If administration is understood to include *subordinate legislation*, the term may pass: if not, the language here held relative to the

functions of these bodies is contradicted by the functions themselves. See *Decret concernant les Municipalités.* Under certain restrictions they are to possess powers of taxation, and the municipal governments in towns are to have power of establishing regulations of police, which as such must frequently be binding upon all the citizens. If this be not legislation, it will be difficult to say what is. All that can be said to distinguish it from the sort of legislation exercised by the National Assembly is, that the one is subordinate, the other supreme: and this surely is sufficient. The acts of the one, if valid, and while valid, are as much *laws* as those of the other: the only difference is, that the laws of those subordinate bodies are liable to be stopped in their formation, or overthrown when formed, by the acts of the National Assembly: while the acts of the National Assembly can be retarded only by the king, and can be overthrown by nobody without the concurrence of the National Assembly itself. If legislation, merely by being subordinate, ceases to be legislation, judicature, by being subordinate, should cease to be judicature. It is a sad error thus to confound *legislation* with *supremacy*—the nature of the function with the dependence or independence of him who exercises it. Names are certainly of little importance, so long as men are agreed about the things signified by them: but the danger is here, lest, when these representative bodies exercise, as they must do on pain of inutility, some act of legislation, somebody should start up and say—" No, this is what you have no right to do; for this is *legislation:* whereas nothing is yours but administration."

I have some doubt about the propriety of this word *disturb*, [troubler,] and whether the memory of past grievances may not here have carried the committee rather beyond the mark. A provincial assembly may say to the court of judicature sitting in the same town. If you adjudge our acts void, you *disturb* us in our operations: yet this is what the court cannot well avoid, if it judges the act not conformable to the powers given by the sovereign legislature; and it is difficult to say what the harm of this would be, or, if there were any, what could be the remedy.

In England, the meanest court that sits would take upon itself to judge whether any law (*by-law* the word here is) of a corporation that came before it, was valid or no: and the Court of King's Bench, a court of mere judicature, issues orders (mandamus's) after hearing of parties, to the local legislatures to exercise their functions, and even punishes the members in case of their going beyond them: and no inconvenience ever happens from this power. The Court of King's Bench, it is true, is not a French parliament, but neither will these new-created courts of justice be so. Refuse them legislation in as positive terms as you please: but if you refuse them judicature in any case, you must lodge it somewhere else: and where can it be lodged with less danger and inconvenience? Whatever judicial power you take away from the ordinary courts, you must institute an extraordinary court, a tribunal of exception, to give it to: and every separate court set up to exercise a fragment of power, that can as well be exercised without it, introduces unnecessary complication, and becomes a grievance.

New Draught. — Art. XVII. The judges, elected as *in manner hereafter ordained*, shall enjoy their offices for life, *unless divested thereof in manner hereinafter specified.* (10)

Committee's Draught.—Art. X. The judges, such of them as, having been lawfully elected, shall have been instituted in virtue of a commission from the king, shall be irremoveable; nor can they be deprived of their places but in case of forfeiture, and after judgment thereof. (*i*)

Observations. — (10) (*i*) My reasons for proposing amotion in certain cases without forfeiture of salary, or of re-eligibility, being connected with various provisions of detail, will stand more commodiously under Tit. III. *Of Judges.*

New Draught. — Art. XVIII. *Judicial proceedings, from the first step to the last inclusive, shall, in all cases but the secret ones hereinafter specified, be carried on with the utmost degree of publicity possible.* (11)

Committee's Draught. — Art. XI. *Judgments*, in what cause and in what form soever given, either upon argument, or upon the report and opinion of a judge-reporter, shall be given publicly: the examinations taken in the course of the procedure shall also be publicly taken in *criminal* causes. In all cases, the parties, or their defenders, shall have a right to be heard, and to make summary observations upon the opinion of the judge-reporter. (*k*)

Observations. — (11) (*k*) Publicity is the very soul of justice. It is the keenest spur to exertion, and the surest of all guards against improbity. It keeps the judge himself, while trying, under trial. Under the auspices of publicity, the cause in the court of law, and the appeal to the court of public opinion, are going on at the same time. So many bystanders as an unrighteous judge, or rather a judge who would otherwise be unrighteous, beholds attending in his court, so many witnesses he sees of his unrighteousness, so many condemning judges, so many ready executioners, and so many industrious proclaimers of his sentence. By publicity, the court of law, to which his judgment is appealed from, is secured against any want of evidence of his

guilt. It is through publicity alone that justice becomes the mother of security. By publicity, the temple of justice is converted into a school of the first order, where the most important branches of morality are enforced, by the most impressive means:—into a theatre, where the sports of the imagination give place to the more interesting exhibitions of real life.

Nor is publicity less auspicious to the veracity of the witness, than to the probity of the judge. Environed as he sees himself by a thousand eyes, contradiction, should he hazard a false tale, will seem ready to rise up in opposition to it from a thousand mouths. Many a known face, and every unknown countenance, presents to him a possible source of detection, from whence the truth he is struggling to suppress may through some unsuspected connexion burst forth to his confusion.

Without publicity, all other checks are fruitless: in comparison of publicity, all other checks are of small account. It is to publicity, more than to everything else put together, that the English system of procedure owes its being the least bad system as yet extant, instead of being the worst. It is for want of this essential principle, more than anything else, that the well-meant labours of Frederick and Catherine in the field of justice have fallen so far short of the mark at which they aimed. Division and subordination of judicial powers are no otherwise a guard to probity, than in as far as the chance of disagreement and altercation presents a faint chance of occasional publicity. Appeals without publicity serve only to lengthen the dull and useless course of despotism, procrastination, precipitation, caprice, and negligence.

If publicity is necessary in any one cause, so is it in every other. For what is that cause in which judges and witnesses are not liable to prevaricate? Give a judge any sort of power, penal or civil, which he is to be allowed to exercise without its being possible to know on what grounds, he may exercise it on whatever grounds he pleases, or without any grounds at all. It was upon these terms that the tribunal, erected by I forget what German emperor, under the name of the Vehmic Council, exercised the power of life and death: the judges of that council became as formidable as the triumvirs at the time of their proscriptions. The Inquisition possess it at present, upon terms not very dissimilar, in Spain and Portugal. The lowest power, penal or civil, you can give a judge, is that over men's fortunes: the power of levying money on an individual, whether on the score of punishment, or in satisfaction of a claim of right on the part of another individual. Give a judge this power without controul, though it extend not beyond the amount of a shilling, you may make him absolute master of men's properties, and by that means, at the long run, of their very lives: lower the sum, all the security you gain is the putting him to the trouble of so many more decrees before he can effect his purpose.

But, essential as it is that nothing should ever pass in justice which it should be in the power of the judge, or of any one, ultimately to conceal, it is not by any means so that every incident should be made known at the very instant of its taking place. If, then, in any case, things should be so circumstanced, that the unrestrained publication of one truth might give facilities for the suppression of another, a temporary veil might be thrown over that part of the proceedings, without any infraction of the general principle. On this consideration is grounded one division of the class of secret cases as laid down in Tit. XIII:—preliminary examinations in criminal causes and others, in which there appears ground for suspecting a plan of concerted falsehood.

Necessary again as it is that nothing should ever pass in justice which it should not be in the power of every one who had an interest in bringing it to light, to bring to light if he thought proper, it is not so that anything should be brought to light, the disclosure of which would be prejudicial to some and beneficial to nobody. It is on this consideration that I ground the three other divisions of the class of secret cases: causes to be kept secret for the sake of the peace and honour of families; causes to be kept secret for the sake of decency; and incidental inquiries to be kept secret out of tenderness to pecuniary reputation.

A word now as to the committee's draught:

And is it then only in *criminal* matters that the proceedings previous to judgment are to be public according to their plan? And is it only the ceremony of pronouncing judgment that is to be public in such cases as are termed *civil?* But on what possible ground admit publicity in the one case, and reject it in the other? Do the terms *civil* and *criminal* indicate any fixed line of separation between the classes they are meant to distinguish?—do they indicate so much as the comparative importance of the cases thus classed? May not four or five livres be the stake in a criminal cause, while four or five millions, or liberty, is at stake upon a civil one?

As to the appendage about the right of being heard—(a provision very distant in its import from that contained in the main article)—I know not very well what to make of it. Take it according to the letter, it seems to put a negative upon all provisionary orders obtained *ex parte* in the course of a cause, as well as upon provisionary sentences of condemnation against absconding criminals. These usages, however, have nothing repug-

nant in them to the general right of not being condemned unheard—a right surely of importance enough to demand an article to itself. In the concluding part of the sentence, the privilege of the suitor seems to lose more by the implication than it gains by the express terms.

The *opinion* of the *judge-reporter* is here spoken of in the singular number as *one* discourse, embracing, as it should seem, the whole body of the evidence that has been collected by him. If the observations here allowed to be made by the parties are to wait till the cause has got this length, that is, till the examination is closed and the witnesses are gone home, complaint is stifled, I cannot imagine why, till the remedy is out of reach. A witness, suppose, is rejected, or liberty refused of putting a question to him which is thought necessary: are the parties or their counsel to sit by and see this, without the liberty of being heard against it?

New Draught.—Art. XIX. Every subject has a right to plead his own cause, in every stage, and before every court, as well by word of mouth as in writing; *and as well by himself, as by the mouth or hand of any person of his choice, not being specially debarred by law.* (12)

ART. XX.—*All monopoly of the right of selling advice or service in matters of law (saving provisionally the profession of a notary) is abolished. Any advocate may practise in the capacity of an attorney; any attorney in the capacity of an advocate; and any man, not specially debarred, in the capacity of either.* (13)

Committee's Draught.—Art. XII. Every subject shall have a right to plead his own cause, as well [*viva voce*] upon a hearing, as in writing. *(l)*

Observations.—(12) *(l)* The right of pleading one's own cause by one's own mouth, or one's own hand, the committee have established: the right of pleading one's cause by the mouth or the hand of a friend of one's own free choice, they have not established. If they have done right in what they have granted, as I contend they have, they have done wrong in what they have refused. Both rights stand upon the same basis: but if the violation of either of them be a grievance, it is that of the latter that is the more cruel grievance.

The right of pleading one's own cause in one's own person, and without the obligation of making use of forced assistance, is of all rights one of those which has the best pretensions to be considered as a natural and indefeasible one. To refuse a man the right of speaking in his own behalf, is to condemn him unheard—to condemn unheard, not a fugitive, but a man who is on the spot demanding to be heard. To render a man's fate dependent upon the endeavours of an assistant, whom if left at liberty he would not choose, is still to condemn him unheard; it is adding mockery to injustice. To compel him withal to pay an assistant thus forced upon him, is adding extortion to mockery and injustice. The worst of all taxes, as I show elsewhere, and the most cruel of all oppressions, is the tax upon law-proceedings. The compulsion here in question carries with it all the oppression and iniquity of a tax upon law-proceedings, without any of the use. It is, to a tax upon law-proceedings, what a forced reduction of the rate of interest is, to a tax to the same amount on money lent at interest. It is a tax upon law-proceedings with this addition—that the produce, instead of being carried into the public treasury, to be applied to the public service, is to be left in the hands of the collector, to be applied to his own use.

The right of accepting, for the purpose in question, the assistance of whatever friend may be disposed to furnish it, stands upon the same basis as the right of pleading on one's own behalf. Without the latter right, the former would lay all those who are most helpless at the mercy of all those who are most able to manage their own cause. It would condemn unheard, or put into a situation as bad as that of condemnation without hearing, the weak in intellect, the raw youth, the bashful maiden, and the timorous woman; the sick, the unavoidably absent, and the dying. It would entail a peculiar hardship upon those who have peculiar claims to favour and indulgence.

Even to men possessed of the ordinary measure of assurance and intelligence, it might be difficult to say which of the two rights ought to be deemed most valuable. Few must they be, who in the whole circle of their private friends may not upon occasion be able to find some one or other better able than even themselves to do justice to their own cause. Though in a man's own cause, the chances are greatly in favour of his superior fitness in this respect, in comparison with any other single man taken at random, yet the odds of the field against one may surely make up the difference.

(13) The provisions exhibited in this article are no more than the undeniable consequences of, if they are not already contained in, those of the preceding article. If every man may be his own advocate, and any man the advocate of any other, there is an end of the monopoly possessed by advocates. But if any man may appear and speak in behalf of any man, it would be absurd indeed to say that he should not appear without speaking. An attorney is one, whom for a certain purpose, a man puts in his place: shall it be said

that a man shall not put himself in his own place? As to the rest, the free choice of an attorney stands upon at least as favourable ground as that of an advocate.

One very important, and very beneficial consequence of the abolition of the whole monopoly, will be the throwing down the legal partition which separates the two main branches of it. It is in a very few, out of the whole number of causes, that it can be any advantage to the suitor that the two functions should be exercised by different persons: and in all but those very few, the separation of them is equally oppressive to the suitor, and repugnant to the interests of truth and justice.

This I shall take occasion to demonstrate at large in a separate paper. Treading everywhere in the steps of the committee, I have inserted thus much here, in order to show that they have acted right in going thus far, but wrong and inconsistently in not going a step farther. This is the place which they have fixed for great and fundamental principles. Advantages of detail, resulting from particular applications of those principles, belong to a subsequent stage.

As to the word *provisionally*, applied to the case of notaries, I inserted it not with any view of advantage to be had by abolishing that branch of the monopoly, but only as a warning against the prejudging so much of the question as concerns their case. Their branch stands upon very different ground from that of the two others. It does not contribute in any shape towards either the denial or perversion of justice. The functions belonging to this purer branch are two:—the penning of contracts and other acts; and the furnishing evidence of their authenticity by attestation. To determine the question respecting notaries, would be to determine the question respecting *register-offices:* for in respect to so much as concerns attestation, the functions of notaries and those of register-offices coincide.

The distinction here spoken of exists no longer in England: the notary, formerly styled *scrivener*, possessing no monopoly as against attornies, has been swallowed up in the attorney.

In the Prussian dominions, by a regulation of not many years standing, all professional advocates are put to silence: pensioned advocates, appointed by the king, being given to the suitors in their room. This is what in the language of despotism, is styled *reform.* To obviate the inconveniences of a loose monopoly, it establishes a close one.

New Draught.—Art. XXI. *In every suit, civil as well as penal, both parties shall attend in person at the commencement of the cause, in presence of each other and of the judge: unless in as far as they may stand excused by special reasons, in manner hereinafter specified; and so from time to time during the continuance of the cause: there to depose, and to be interrogated, at any time, they or their representatives, each on the part of the other, in the same manner as witnesses.* (14)

Observations. — (14) This is but one feature, though that certainly a capital one, in the system of natural or domestic procedure, which I adopt in all its points: all technical ones being absurd and pernicious, as I shall show in due time, in proportion as they depart from it. I introduce the article here, partly as having an intimate connexion with that for the abolition of the monopoly possessed by lawyers, partly for the occasion I shall have to build upon it.

It is not enough that suitors be *permitted* to attend upon their own business; they must be *bound* to do so, at least at the outset, saving such exceptions as particular necessities may suggest,—a topic of detail not worth discussing here.

When the parties are brought face to face, at the outset of a cause, in presence of the judge, both speaking upon oath, upon the same footing as witnesses, the following advantages are the natural result of such a meeting:—

1. No cause, that is not carried on *bonâ fide* on both sides, can well go any farther: the suspicions entertained, by each of each, being reciprocally communicated, are either removed or converted into certainty, and the plan of fraud and treachery, whatever it be, being rendered hopeless, is abandoned.

2. The same thing may be said with regard to all causes founded on any error or misconception on either side, which it is possible for such information as the other party has in his power, or the sagacity of the judge, to remove.

3. If the cause turns solely upon the evidence of the parties, or upon such real evidence as they happen to bring with them, or upon the question of law, or upon all together, it may receive a decision upon the spot. And why not then, as well as weeks, or months, or years afterwards?

4. The cause, if not terminated, is at any rate cleared in the first instance, by mutual admissions, of all facts on each side which the other does not mean to contest. By this means it is cleared of all the witnesses and written or other real evidence relative to those facts, of all expense relative to the production and examination of such evidence, and of all expense relative to the drawing of instructions for such production and examination. If the costs of the successful are thrown upon the unsuccessful party, a man though ever so much disposed to take any unfair advantage, will make no difficulty of admitting all such as, if not proved already, he is satis-

fied it must be in the power of the adversary to prove.

5. Both parties speaking upon oath, and like witnesses under the check of cross-examination administered upon the spot, all such false allegations, the truth of which he who makes them has no hope of being able to maintain, are cut off at a stroke.

Thus are both species of insincerity, falsehood and suppression of truth, banished, and that at the outset, from every cause: at least rendered as perilous on the part of suitors as by the best mode of examination possible they are already on the part of witnesses. Insincerity is the great support of litigation. If scope were not left for the insincerity of the client, the insincerity of the lawyer would remain without employ. Insincerity has accordingly, in all modes of procedure devised by lawyers, at least by English lawyers, been knowingly and wilfully allowed, protected, and encouraged.

6. If the cause, for want of sufficient evidence, is not yet ripe for an absolute decision, the party who feels himself to be in the right, may in the meantime have the satisfaction of receiving a sort of conditional decision, which to him may be little less tranquillizing than an absolute one. It will have been thoroughly understood, even at this early period, upon what hinges the dispute turns: whether it is the matter of law that is in question, or the matter of fact: what the facts are, on which the pursuer grounds his claim, and whether the defendant's reliance is upon the disputing of those facts, or whether he trusts to some counterplea, which the pursuer disputes. A perspective view is thus gained at any rate by both parties, of the whole field of inquiry which the cause can have to run through: and it is in the power of the judge to announce to them hypothetically, what his decision will be in any event: what if the law or the facts turn out this way, and what if they turn out the other.

7 If it be a case fit for *compromise*, now is the time when a compromise may be brought about, at the most advantageous period, and under the most advantageous circumstances.

There are two cases, and but two, in which a compromise is not inconsistent with the ends of justice. The one results from the state of the *law;* the letter of the law lies open before both parties; and the manifest uncertainty of it reduces in the eyes of each the value of his claim. It may appear to each better to forego a part of his hopes, and realize the other part, than to remain exposed to the chance of foregoing the whole. The other case results from the circumstances that attend the *fact*. The expense of investigation may be certain; the result uncertain. The expense may be greater than the value in dispute. This may even remain the case, after all artificial expense has been struck off by law, and of the natural, none left but what is unavoidable; witnesses, for instance, to be fetched from distant parts, long accounts to be sorted, copied out, and subjected to minute discussion. In the first of these cases, it is true the compromise can derive no facility from the presence of the judge. It is his duty to decide. He must not be allowed to profess uncertainty, lest he should affect it. Groundless doubts may be affected with much less peril of character, than groundless decision given; and use might be made of them to extort from the suitor the sacrifice of a clear right. But as to every other subject of doubts, there is nothing to restrain the judge from assisting the parties with his representations and advice. What should hinder him? Is there any repugnancy between the functions of the mediator and the judge? There should seem to be, in the eyes of the committee; for they institute a set of courts upon a separate establishment, ordained to mediate, and impotent to decide. See the annexed paper on the reconciliation offices proposed by the committee.

8. If *delay* is now requested, no more will naturally be granted than what the exigencies of justice really demand. For, the party who applies for it will naturally be required, not only to make known the purpose for which he wants it, but to satisfy the judge that it is necessary for that purpose.

Under the current systems of procedure, delay is fixed inexorably for all causes, because it is possible that it may be necessary in some. A certain measure of delay every defendant is entitled to, whether he has need of it or no, and without telling any lies to get it. Another measure, upon telling certain lies, which, not being rendered punishable, are told without reserve or mystery. Another measure again, upon giving such reasons, as, true or false, shall have been fortunate enough to have passed the test of examination. So long as you make a point of keeping suitors at a distance from each other, and from the judge, this profusion of delay is unavoidable. When you cannot tell how much time a man may honestly have occasion for, you must make sure of giving him enough. As you will not ask anybody that can tell you, it is impossible you should know how much he has occasion for. You must therefore give him what, in ninety-nine instances out of a hundred, will be too much. Such is the consequence of unbending rules in a system of procedure.

What then? Are men of the first rank and consideration — are men high in office — men whose time is not less valuable to the public than to themselves—are such men to be forced to quit their business, their functions, or what is more than all, their pleasure, at

the beck of every idle or malicious adversary, to dance attendance upon every petty cause? Yes, as far as it is necessary, they and everybody. What if, instead of parties, they were witnesses? Upon business of other people's everybody is obliged to attend, and nobody complains of it. Were the Prince of Wales, the Archbishop of Canterbury, and the Lord High Chancellor, to be passing by in the same coach, while a chimney-sweeper and a barrow-woman were in dispute about a halfpennyworth of apples, and the chimney-sweeper or the barrow-woman were to think proper to call upon them for their evidence, could they refuse it? No, most certainly. Of the two hardships, then, which is the greatest—to attend upon other people's business, or your own? One thing is certain, that if a great man who sues or is sued does not attend the judge, he must attend an attorney. Of the two attendances, which is most humiliating to his grandeur, and most consumptive of his time? Another thing is equally certain, that by the attendance of one person, great or small, in the character of a party, you may save the attendance of twenty such persons in the character of witnesses. What by confessions, concessions, or proposals—what by narrowing a cause, or putting an end to it altogether—no expense of time can be thus incurred that is not repaid with usury.

When a suitor, instead of attending a judge, attends an attorney, what is there saved by it? The client tells his story to the attorney, that the attorney may tell him what the judge will do, if the story turns out to be true. The attorney knows nothing about the matter; but he will write down the story, and give it to a counsel, that the counsel may tell him what the judge will do. If anybody knew what the judge would do, one should think it should be the judge. But the judge is not to be spoken with. How can you expect he should?—a cause would be put an end to as soon as begun—he has not been for some hundred of years; nor ever will again, if he can help it.

Convenient as this meeting would be to suitors, the opposite arrangement, it must be confessed, is by much the most convenient to all sorts of persons upon whom the option depends. It is more convenient to the lawyer to have a great deal of business, than a little. It is more convenient to the judge to do business with friends and gentlemen, than with low people and strangers. It is more convenient to the legislator to listen to the wishes of those who would save him from all trouble, than of those who would give him a great deal. I speak of British legislators: not of French, who know no pleasure but such trouble.

New Draught.—Art. XXII. All privilege in matters of jurisdiction stands abolished. All subjects stands henceforward upon an equal footing, in respect, as well of the manner of pleading, *and the order in which their causes are to be heard and decided*, as of the choice of the courts before which they are to plead. (15)

Art. XXIII. — The constitutional order of jurisdiction shall not be disturbed, nor the subject drawn out of his natural court by *royal* commissions, or attributions of causes, or arbitrary evocations. (16)

Committee's Draught.—Art. XIII. All privilege in matters of jurisdiction is abolished. All subjects without distinction shall plead in the same form, and before the same court, in the same cases. (*m*)

Art. XIV. — The constitutional order among the jurisdictions shall not be disturbed, nor subjects called out of their natural tribunals by commissions or attributions, or arbitrary evocations. (*n*)

Observations. — (15) (*m*) Happy France! where aristocratical tyranny is laid low; while in England it is striking fresh root every day. When a peer commits a murder, more mischief is done by his trial, than by his crime. The time of the legislature, that time which is the property of the nation, and which ought to be employed on great plans of national reform, of which there is such abundant need — that time of which there can never be found enough, even for the routine of unavoidable affairs — is wasted upon this and a thousand other petty businesses, which could be a thousand times better transacted elsewhere. To the nation, the life of an idle peer is worth as much as that of an idle porter, but not so much as that of an industrious one. To the peers, their right of being tried by their own body in capital cases was of use when peers were in a state of perpetual hostility with the crown, and juries were at its devotion. It is now a burthen to the nation, and of use to nobody, unless it be to the Lord Chamberlain, and to make a raree-show.

(16) (*n*) In this fourteenth article, as in several of the preceding ones, we see correction, as is natural and necessary, treading in the footsteps of abuse. But, the mischief consisting in the application of the king's sole authority to these purposes, respect should not have prevented the introduction of the king's name. Commissions given, and attributions made by the authority of the National Assembly after public debate, on the grounds of public necessity, would stand upon a very different footing. Such extraordinary exertions of power nothing but necessity should extort from any authority; and in a settled government, such necessity is not likely frequently to arise. But that it may sometimes arise is what the National Assembly can have

no doubt of, for it is what they have been acting under every day, though in the chastest manner, and with the most exemplary regard to justice. In tying up the king's hands, they should take care to confine the knot there, and not slip it unawares upon their own.

New Draught. — Art. XXIV. *Resolved,* That this assembly will, with all convenient speed, proceed to the enactment of a law to determine in what cases, and how, the power of evocation may be lawfully exercised. (17)

Committee's Draught. — Art. XV. A law shall be made to regulate the laws where evocation may lawfully have place. (*o*)

Observations. — (17) (*o*) Of the future law about evocations, as here announced, I have some suspicions. A lawsuit carried on, in order to know whether a lawsuit shall be carried on, is a bad thing: especially a lawsuit carried on in the capital by the inhabitants of a remote province, in order to know whether a lawsuit is to be carried on in that or a neighbouring province. In the cases where it may be proper a cause should go out of its ordinary court into an extraordinary one, it would be much better if it could be made to find its way thither of itself, without any one's interfering extrajudicially to evoke it. This is accordingly what I have aimed at in a set of provisions which will be found in Tit. IV. of the present draught.

This article is nothing but a *resolution;* in which form I have accordingly conceived it.

Committee's Draught. — Art. XVI. All subjects being equal in the sight of the law, every sort of preference, even respecting the rank and order in which a man shall be judged, is an injustice. In every court, the clerk shall keep a register-book, of which the leaves shall be numbered and signed by the president, in which all the parties who demand judgment shall cause their names to be set down in the order in which they shall have appeared and made requisition at the office. The president shall form three lists; in which shall be distinguished causes upon report, causes for hearing, and matters of a provisionary and summary nature. Each matter shall be entered upon the list to which, by its nature, it belongs, but in the order in which the names of the parties have been entered upon the register-book in the office: and this order shall be followed in giving judgment. (*p*)

Observations. — (*p*) Of this 16th article the first sentence seems to be unnecessarily severed from the 13th. The great principle it lays down will be found, I doubt, to be but indifferently pursued in the details that follow in the same article — details too minute to match with the rest of the contents of so general a title. The technical nomenclature of *causes upon report*, and causes for *hearing*, citing and adopting the present technical practice, the putting of these dilatory modes of proceeding before the summary ones, as if delay was to come in course, and expedition only in causes that were not worth delaying, are no very favourable omens. A fundamental position with me is, that every cause should be presumed summary: none taken out of that class without special reason. Expedition is the good to be aimed at: delay an evil to be submitted to through necessity, and only to the extent of the necessity. But of this hereafter in its place.

As to the inviolability of the order of the causes, by the parties whom the committee speak of as demanding judgment, they must surely mean the pursuers in each cause; for if the priority depended upon the defendants in cases where the defendant's object is delay, as it is in most causes, the expedition gained by this regulation would not be very great. What then? When a cause is set down for argument, and the person who should argue it is dead, or confined to his bed, is it to be decided on that very day, and without hearing? If not, either the order of the causes must be departed from, or fifty causes must be delayed to no purpose on account of one. The article, by the terms of it, does not exclude any sort of cause, criminal any more than civil. A defendant guilty of a capital offence is not likely to be in any great haste to join in setting down his cause.

In judicial procedure, every rule that is not made to bend will be sure to break, or still worse must ensue. And when a rule, laid down by the legislature, is made to bend by the authority of the judge, what is this but the power of interpretation so anxiously proscribed.

In the Court of King's Bench, causes are in general tried in the order in which they are set down upon the paper. Yet, upon special reason given, a cause is every now and then brought forward, or put back. But as this, if opposed, cannot be done without both parties being heard, nobody ever dreamt of the power's being abused.

New Draught. — Art. XXV. *Resolved,* That this Assembly will proceed with all possible expedition to frame a new code of procedure, of which the object shall be to render the administration of justice as simple, as expeditious, and as little expensive, as possible.

Art. XXVI. *Resolved,* That this assembly will proceed with all possible expedition to frame a new code of penal law, of which the object shall be to render the punishments in every case as proportionate, as mild, and as apposite, as possible; never losing sight of the maxim, that every *lot or degree of*

punishment which is not necessary, is a violation of the rights of man, and an offence committed by the legislator against society.

Committee's Draught. — Art. XVII. The code of procedure in civil cases shall be reformed without delay, so as to render the proceedings more simple, more expeditious, and less expensive.

Art. XVIII. The penal code shall be reformed without delay, so as that punishments may be better proportioned to offences; taking care that they shall be mild; and never losing sight of the maxim, that *every punishment, which is not necessary, is a violation of the rights of man, and an offence committed by the legislator against the community.*

CHAPTER II.

TIT. II.—DISTRIBUTION AND GRADATION OF THE COURTS OF JUSTICE.

New Draught. — Art. I. IN every parish [or canton] there shall be a court of justice of immediate jurisdiction, under the name of the *parish* or [*canton*] *court*, composed of a single judge; saving such consolidations or divisions of parishes, as may be made for this purpose, in virtue of the powers hereinafter given.

Art. II. In every district there shall be a court of justice of immediate jurisdiction, under the name of the *immediate district court*, composed, in like manner, of a single judge.

Art. III. In every department, or subdepartment, or district, there shall be a court of appeal, under the name of the *provincial court of appeal*, composed, in like manner, of a single judge.

Art. IV. At Paris there shall be a court of appeal, in the last resort, under the name of the *metropolitan*, or *supreme court*, composed, in like manner, of a single judge.

Art. V. The decrees of the metropolitan court of justice shall be final, except such on account of which censure shall have been past on the judge, by a decree of the National Assembly, in manner hereinafter specified.

Art. VI. To each of the several classes of courts above mentioned, is given authority over all sorts of persons, and in every sort of cause, throughout the kingdom: saving only the difference between jurisdiction immediate and appellate, and the authority of certain *tribunals of exception*, in as far as the same is hereby acknowledged, and provisionally confirmed.

Art. VII. These are, — 1. Courts-martial in the land service: in as far as the powers of such courts are confined to the maintenance of discipline among military men.

Art. VIII. — 2. Naval courts-martial: in as far as their powers are confined to the maintenance of discipline among men engaged in the naval department of the public service.

Art. IX. — 3. Causes relative to matters happening at sea, on board private vessels, belong to the jurisdiction of the courts of any territory where the vessel is in harbour; viz. to the immediate courts, if no regular judgment has been passed, in virtue of any lawful authority, on board the vessel; or, if there has, then to the courts of appeal.

Art. X. — 4. Courts ecclesiastical: in as far as the powers of such courts are confined to the maintenance of ecclesiastical discipline among ecclesiastical men.

Art. XI. — 5. All representative assemblies: for the purpose of putting a stop to, and punishing, offences committed, by members or others, in face of the assembly.

Art. XII. All courts, other than the tribunals of exception as above specified, shall be comprised under the common appellation of *ordinary courts*.

Art. XIII. In every ordinary court but the parish court, and in every parish court where there is a judge specially appointed, as in Tit. V. there shall be a *pursuer-general*, and a *defender-general*.

Art. XIV. Attached to the authority of the judge, as well as to that of the pursuer-general and defender-general of every ordinary court, shall be the power of appointing substitutes, or *deputies;* viz. one *permanent*, and *occasional* ones as occasion may require.

Art. XV. The name of *advocate-general*, or *public advocate*, shall be common to pursuers and defenders-general; and the name of *judicial magistrate* to judges, advocate-generals, and the permanent deputy of each.

Committee's Draught. — Art. I. In every *canton* there shall be a *judge of the peace*, with *good-men-and-true* [prudhommes] for his assessors.

Art. II. In every district there shall be a king's court, under the appellation of the *district court*.

Art. III. In every department, one of the district courts shall bear the name, and execute the functions, of a *department court*.

Art. IV. In such towns as shall appear to afford the most convenient situations, there shall be established *superior courts* of justice, which shall have for their field of jurisdiction, that of three or four departments, according to local exigency.

Art. V. Over the superior courts of justice there shall be, for the whole kingdom, a *supreme court of revision*.

Art. VI. The *high national court*, which shall have cognizance of impeachments of ministers, of crimes of high-treason against the nation, and of crimes punished with forfeiture on the part of courts of justice and administrative bodies, shall sit, when con-

voked, in the same place with the legislatures [*auprès des législatures*].

Art. VII. Matters of police, matters of trade, and causes relative to taxes and matters of administration, shall be cognizable in place and manner hereinafter to be explained.

Observations. — The principal differences beween the Committee's plan and mine, turn upon the following points: viz.

1. The number of the judges put into each court. I put but one into any: they, from three to eighty-eight.

2. The principle of demarcation employed for the parcelling out of jurisdiction among different courts. I employ but one principle throughout, the geographical. They, after pursuing the geographical principle to a certain length, subjoin a multitude of tribunals of exception, grounded, as it should seem, upon no fixed principles.

3. The number of degrees of appeal. I establish two, and no more than two, for every sort of cause. They establish appeals in a number which it is not easy to count: different for different causes, and greater in several instances than they seem to be aware.

4. The vesting or not in the same persons the powers of a court of appeal, and those of a court of immediate jurisdiction. I establish this union of functions in no instance: they in several.

5. The nature of the tribunal standing on the summit of the scale. They give the penal controul over all other tribunals to a court called the High National Court, which is to be altogether independent of the National Assembly, and is to do a variety of other business. I give it to the National Assembly themselves: not thinking it fit to give, to any other set of men, a negative upon their laws.

6. The subjoining, as the committee does, a species of tribunal, with an authority different from that of an ordinary court of justice, under the name of a reconciliation-office. I admit no such thing; seeing nothing in a judge to hinder him from recommending a compromise, where such a recommendation is proper, nor any use in necessitating a lawsuit for the chance of saving a lawsuit, or in setting up a court with power to obstruct justice, and none to render it.

7. The mode of filling the offices of judicature. My plan, which is a new and particular one, has for its object the union of economy on the part of the establishment, with responsibility, intelligence, experience and that of the most suitable kind, on the part of the judge: without prejudice to the freedom of election on the part of the people.

8. The provision made for promptitude of justice, as far as depends upon the institution of the courts. In the committee's I shall have occasion to point out several causes of retardation: in mine, several expedients for acceleration.

9. The provision made with regard to publicity. The committee make the publicity, or non-publicity of the proceedings, depend upon the penality or non-penality of the cause. Rejecting that distinction, I make the proceedings public in general; reserving secresy only for such special cases in which I can show it to be necessary, and in them no farther than it is necessary.

Where the committee mean the proceedings should be public, they give the judge, for witnesses of his conduct, two men, leaving him to take his chance for more, where they allow him any more. I give the obscurest judge a whole congregation: employing several expedients for securing to judges in more conspicuous situations, the benefit of a superintending audience.

10. The provision made for secresy, on particular occasions on which secresy is not incompatible with the ends of justice. This seems to be the object aimed at by the committee, in their institution of the family tribunal. In my plan, without prejudice to the ends of publicity, secresy is assured in all cases where anybody would wish for it, and just so far as they would wish for it, and no farther. The committee, though they appear to wish for it, have done nothing to ensure it.

11. The provision made for assistance to be given to the poor, to enable them to obtain justice. The committee establish a sort of court, or office, on purpose, consisting of members distinct from the courts of justice. I institute for the same purpose a pursuer-general and defender-general, with this and other functions, in the place of the committee's king's attorney, or attorney-general.

12. The use made of the institution of juries. The committee, in compliance with a general and not ungrounded prejudice, make it a fundamental article of the constitution. I give it to those who choose to have it, in cases in which they choose to have it, and not unless they insist upon having it: looking upon it as an institution, admirable in barbarous times, not fit for enlightened times, necessary as matters stand in England, of use against particular mischiefs, but those happily no longer possible in France. The grounds of this opinion will be amply set forth in a dissertation on purpose.

The questions concerning the number of the judges to be put into a court, the principle of demarcation to be pursued in the multiplication of courts, and the number of degrees to be permitted in the business of appeal, being topics that run through the whole plan, must meet with some degree of consideration under the present title. The remaining ones may wait for the several titles

by which they will be respectively brought to view.

I. *Of Numbers in Judicature.—Single Judges preferable to many.*

The question as to the number of judges acting together in the same court, seemed of such importance as to require a discussion too long to appear in form of a note. I have accordingly dismissed the full consideration of it to a separate essay. The result is, that (under the auspices of publicity) one judge is beyond all comparison preferable in every instance to any greater number. That this will be found to be the case, whether the question be considered with regard to the *properties* to be wished for on the part of an *establishment* for the administration of justice—which are, *rectitude of decision, promptitude,* and *cheapness:* or the *qualities* that in that view are to be wished for on the part of a *judge*—which, as far as they are concerned in the present question, are *probity, exertion,* and *intelligence.* That probity on the part of a judge is, to every practical purpose, to be considered as exactly proportioned to the strictness of his dependence on public opinion, meaning the general tenor of it. That a single judge finds nobody on whom he can *shift off* the odium of an unjust decree—nobody to *share* with him the weight of that odium—none to help, *support* him under the apprehension of it, by the encouragement of their countenance. That a single judge has it not in his power to give, without committing himself, the value of half a vote to an indefensible cause, by purposed *non-attendance.* That the reputation of a single judge stands upon its own bottom: and that he finds nobody to help him, as numbers help one another, to raise a *schism in the public,* and draw after them the suffrages of the unreflecting part of it, in spite of evidence, by the mere force of *prejudice.* That a judge, by being single, *exerts* himself the more from his seeing no resource but in his own powers. That in a single judge most *intelligence* is likely to be found, in as far as intelligence is the fruit of exertion. That the advantages obtainable from a plurality of heads independent of exertion, are wanted only in a small proportion of the whole number of cases: and may be had, in proportion as they are wanted, by the help of advocates and courts of appeal, without putting more judges than one into the same court. That it is only under a single judge that the quality of *promptitude* can be pushed to perfection. That a single judge has but one opinion, and one set of reasons, to give: that he has nobody's opinion to wait for: nobody to debate with, to gain over, or to quarrel with: nobody but himself to put unnecessary questions, suggest unnecessary steps, and necessitate useless adjournments: all which causes of *delay* are so many causes of *expense:* nor, what to the committee seems to be so much the object of apprehension, anybody to form a *party* with, and rise up in *opposition* to the authority of the *legislature.* That the addition of colleagues in judicature is productive of the several inconveniences alluded to, in a degree exactly proportioned to their multitude. That all the advantages that can be expected from a multiplicity of judges may be insured, in a much greater degree, by a numerous auditory, with the addition of the whole world for readers, as to everything in the conduct of a judge, that anybody thinks worth their notice: and that any advantage, that can ever have resulted by accident from such multiplication, can be imputed to nothing but the chance it affords of an occasional glimmering of publicity. That what constitutes *arbitrary power* in judicature, is not the unity of the judge, but his exemption from the controul of a superior, from the obligation of assigning reasons for his acts, and from the superintending scrutiny of the public eye. That the reproach of arbitrary power belongs, on all the accounts we have seen, to the authority of *many* judges, especially large bodies of judges, in contradistinction to that of *one:* and that the circumstances which render plurality indispensable in sovereign legislature do not apply to judicature. That in Great Britain this reasoning has received the fullest confirmation imaginable from experience: that the probity of the courts of justice there runs uniformly, in a ratio compounded of the direct proportion of the publicity of the conduct of the judges, and the inverse proportion of their numbers. That imagination cannot conceive, nor heart desire, greater integrity than has been uniformly displayed for ages, by courts composed of single judges, without juries, under the auspices of publicity, though in a state of dependence on the crown: while courts composed of large multitudes of judges, and those occupying the highest ranks of life, have, either virtually or formally, abdicated their authority, on the avowed ground of their profligacy or inaptitude.

If these principles be just, the saving they will produce in the expense of the establishment is prodigious. In the expenses attending the collection of taxes, in the terms of loans, in the adjustment of most other plans of economy in finance, a saving of a few units per cent. is thought a great matter: here it runs in hundreds per cent., and the least saving is a hundred.

A question the committee do not appear to have taken into consideration is, whether the number of judges allotted to each court are on every occasion to sit together, taking every one of them cognizance of each cause in every stage of the proceedings; or whether on any and what occasions they are to divide themselves, one part sitting upon one cause, and

another part sitting upon another cause, at the same time.

For this question my plan affords no room. On the plan of the committee, it is of the highest importance.

I. First, Suppose the judges never to separate. In this case, what if one set of judges to a territory, to a district, to a department, to a *super-department*, should not be sufficient for the business? What follows? Either a proportionable part of the causes must go without justice, or more such courts than one must be established in every such territory. My notion is, that there will scarcely be any one such territory in which the single court allotted to it will suffice: and that, on the contrary, several will be found, in which a considerable number of such courts will be found necessary. If so, this profuse multiplication of judges, and the profusion of expense which is the consequence, must be multiplied in proportion; and the multiplication will increase in proportion with the facility of the terms upon which the people obtain justice; that is, with the goodness of the plan—with the degree of its subserviency to its end in other respects.

In point of power of dispatch, it must not be supposed that five, or ten, or twenty, or six-and-thirty judges, will be equal to one; they will be much less than one, and less in proportion to their multitude. The reasons of this have been already intimated, and are more fully stated in the paper alluded to. Where I should want three or four courts of concurrent jurisdiction in the same territory, the committee, for the same quantity of business, might want four or five.

If the judges were not to sit constantly all together, but were upon occasion to distribute themselves, then—

1. In proportion as the distribution took place, the principle of the committee would be departed from; and whatever advantages are expected from the multiplicity of judges would be given up.

The distribution, if any, would be, I suppose, for the purpose of dispatching different causes at the same time. It is not very natural, though in many instances it would be possible, that it should take place, for the sake of dispatching at the same time several points relative to the same cause. Points in a cause present themselves generally at successive periods, according to the stage to which it has advanced. It is possible, indeed, for one judge to be examining one witness; another, another; while a third judge is occupied in hearing a debate on some question of law. But this is not the usual course, nor in general would it be a very eligible one.

In France, the custom has been hitherto, if I understand right, for one judge, in a court consisting of perhaps twenty judges, to take to himself, under the name of judge-reporter, the examination of all the witnesses: while the decision, whether upon the conclusions to be drawn from the evidence, or upon the questions of law, is given afterwards by the whole body. According to my notions, if there were any use for more judges than one, it would be much rather for the examination of witnesses, than for deciding on the question of law, or upon the whole body of evidence, as furnished in writing by other hands: but of this elsewhere. Be that as it may, if, while one judge is occupied in collecting the evidence, the other nineteen are to stay at home, and do nothing, nothing is gained by the separation. Nineteen judges out of twenty are kept idle, without any reason: the advantages, real or imaginary, of a multiplicity of heads, are sacrificed: and nothing gained in dispatch, except what depends upon the hitherto-unheeded advantage, in this respect, of one over a multitude.

If this matter is to be left at large, as I believe it is, more or less, in France as well as elsewhere, then comes in a world of complication: regulations deciding what number of judges shall be necessary in one case, what sufficient in another: adjournments for want of the sufficient number: debates on the question whether a case belongs to one or another of these heads. This is one out of the thousand ways in which trouble and expense are spun out of nothing, to no purpose.

If it be impossible to know beforehand, with any tolerable exactness, what the quantity of business will be in any judicial territory, and what number of courts it will require to go through with it, the fixing beforehand a precise number of courts for any such territory must be improper: if not enough, the consequence is a failure of justice; if more than enough, an unnecessary expense. This must be particularly apt to be the case under a new system, so different from everything that has gone before it. It is on these considerations that I have rendered the number of judges, that is, of courts of concurrent jurisdiction in each territory, so far loose as to be able to be suited with tolerable exactness to the experienced demand: viz. by the powers given to each judge to appoint deputies without salary, and the powers given to the local representative bodies to add courts, composed of single judges with salaries, as will be seen under the next title: avoiding every expense on this account, of the necessity of which there can be any doubt.

This sort of pliancy, so necessary to every new establishment, nothing but the system of unity in judicature, and the extreme simplicity that characterizes it, could have rendered practicable.

The confidence which the committee have in numbers is extreme. No consideration but that of the expense seems to set them any limit on this side: of course, the more im-

portant the business of the court, the more judges they put into it. In their lowest order of courts, as there are to be so many of them, (about four thousand) they put but one judge, who surely must be paid as such, though nothing is said about it—doubtless, because they could afford no more; but to him they add two other poor men, under the name of assessors, who are to appear to cost nothing, because the expense is to be thrown upon themselves. In the order of courts next above, in the district courts, they put five. In the courts called Reconciliation offices, one to each district, which are to keep men from going to the district courts, they put six, of whom three are to appear to cost nothing: the other three, being lawyers, are to be paid: in the department courts, ten: in the courts called Superior, twenty: in the court called Supreme, thirty-six: in the High National Court, which is still higher than the supreme, eighty-eight, out of whom eighty-three are to have the name of jurors, with scarce anything but the name.

What should have occasioned this predilection for crowds, I am under some difficulty to determine.

1*st*, It cannot have been experience of advantage: the testimony of experience can hardly have been so opposite, surely, in France, to what it has been in Great Britain.

2*dly*, Was it mathematical reasoning? Perhaps so, in some degree. I have by me a large quarto of mathematics, written by a mathematician and politician of deserved eminence, in which the utility of numbers, as a security for good judicature, is assumed. The conclusions of mathematicians, though always mathematically just, are not unfrequently physically false: that is, they would be true if things were not as they are. Some necessary element is omitted to be taken into the account: and thus the only effect of the operation is to mislead. Of the elements which I have ventured to suggest as proper to be taken into the account here, unfortunately there is not one that has been taken into the account I speak of.

3*dly*, Was it the mere force of habit? Probably so, in no inconsiderable degree: the habit of seeing numbers put to the same business, and the greater numbers commonly to the more important business. But of this multitudinous establishment of judges, what was the final cause? Was it the advancement of justice? was it that they who raised it, thought that justice would be the better for it, or cared whether it would be or no? No: but because the king wanted money, and this was found a way of getting it: the more judges, the more offices; the more offices, the more money.

In the decision of this question, one thing ought not to be forgotten. Simplicity and frugality being on the side of unity, the *onus probandi* lies altogether on the other side. It is for those who contend for the complicated and expensive establishment, to show that it possesses advantages, and those so considerable, as to outweigh the indisputable and enormous inconveniences of complication, and multiplication instead of addition, of expense.

Even although, upon no other grounds, the decision were unfavourable to the principle of unity in judicature, still, if it were not very clear and peremptory, the prodigious advantage, in point of economy, might entitle it at least to a temporary trial. Should the system of simplicity fail upon the trial, nothing would be easier than to go on to a more complicated one, and add complication in proportion as complication were adjudged necessary. Begin with a complicated one, it is not so easy to fall back into the line of simplicity. At the first outset you may give your scale of expense whatever degree of contraction you think proper, without hardship to any one: but a scale of expense once enlarged cannot be contracted without real hardship and much difficulty. Before any one is named judge, say there shall be one judge only, instead of six-and-thirty, and you hurt nobody. But suppose six-and-thirty chosen, are you then at liberty to strike off five and thirty of them? Not justly, without continuing them their salaries: and even then, loss of dignity and power is a hardship, for which you have afforded them no compensation.

View the establishment as a subject of economy: so long as frugality presents but a tolerable chance of answering the purpose, who, in an overburthened nation, would give the first trial to profusion? Consider it in the light of a means directed to an end: better pay the price of the complicated establishment for the simple one, than that of the simple one for the complicated one.

I could suggest temperaments and compromises—unity below, multiplicity above, where, fewer tribunals being wanted, it would cost less; because purity above insures purity below; and the certain disappointment of all projects of injustice is a sure preventative of all such projects. Numbers in the last resort, to those who choose to bear the expense: as in England you may for a guinea a-head have a special jury, if you choose not to trust to a common one. But why look out for temperaments, to spoil simplicity and substitute mediocrity to excellence? Reason, supported by experience on one side: prepossession derived from mere habit on the other — can the most enlightened of nations hesitate?

The strength of the argument against single judges and summary justice lies in an epigram of Montesquieu's. Single judges are bashaws: summary justice is Turkish justice. " The

bashaw sees how the matter stands at the first word, orders both parties a good drubbing, and there's an end of it." The situations are not altogether parallel. In Turkey, no written law; for among the thousand and so many pages of the Koran, there are scarce ten about law; and they might as well have been about anything else. In Turkey, no public, no press, no newspapers, no National Assembly, no municipal or administrative bodies, no popular elections. In Turkish justice, no minutes of proceedings, no appeals, no means of escaping from the jurisdiction of an exceptionable judge, into that of an unexceptionable one: an escape which the committee's plan hopes in vain to effect at the expense of a lawsuit on purpose, to be carried on in the metropolis; and which mine insures without expense, delay, or difficulty.

Thus much for the advantages of simplicity, in relation to the number of judges to be put into a court. We shall find them equally indubitable, and little less considerable, in relation to the multitude of sorts of courts to be put into the establishment. I mean the adoption of the geographical principle of demarcation to the exclusion of every other, striking off without mercy all manner of tribunals of exception, as well those which the committee create, as those which they destroy: two or three indispensable ones excepted, which, as presenting themselves to everybody, they have not thought it worth their while to notice.

CHAPTER III.

Title II. *continued.* — On the Mode of parcelling out Jurisdiction.

In an extensive country, such as France and England, more tribunals than one are necessary.

Two causes concur in the production of this necessity: 1. The time which the business must take up on the part of the judge; 2. The time and expense which it must cost the suitor to go in quest of justice.

A necessity of this kind may result from the first of these causes, where it would not from the other. Population may require more tribunals than one, where mere local distance would not. In a town like Paris, it is not conceivable that the time of one tribunal should be sufficient for all the business: but if it were, it could scarcely be worth while, on the mere account of local distance, to set up two. In the largest city, were the situation of the seat of justice at all centrical, no inhabitant could have more than two or three miles to go to it. The consumption of time would be little worth noticing, and the expense still less.

The consideration of local distance, including that of the time and expense of travelling, tends on two accounts to necessitate the multiplication of tribunals: on the score of *economy*, and on that of *promptitude*. Expense attending the pursuit of justice has the effect of a denial of justice to all who have not wherewithal to defray the expense: and consumption of time, to him who lives by the sale of his time, is equivalent to expense. Distance in point of place, making a proportionable distance in point of time, is productive of a failure of justice, in all instances in which, the business of justice if not done within a certain time cannot be done at all, and it is not done within that time: as if a fugitive thief were to be apprehended no otherwise than under a warrant from the judge, upon the application made by the party robbed, and the party's residence were fifty miles from that of the judge's.

On both these accounts, if the consideration of local distance requires anywhere the *multiplication* of tribunals, it is by requiring their *distribution*. There must in the whole be several tribunals, that everywhere within a moderate distance of the remotest suitor, there may be one.

The advantage to be gained by the institution of several tribunals at a distance from one another, could not be insured in every instance, unless a boundary line of some sort or other were drawn between them somewhere, distinguishing the spots over which their jurisdiction should respectively extend. In vain would you give a man a tribunal close to his own house, if, at the pleasure of an adversary who waited for nothing but an opportunity of distressing him, he were liable to be dragged away before a tribunal at the farther end of the country.

The purely *local* ground of multiplication may exist, too, without the *temporal*. Few or many, distant from, or contiguous to each other — all the inhabitants of a country must have access to, all must be accessible to — justice. Few or many, every one of them, every two of them, at least, must have within a certain distance of them a judge. For want of justice, any man may at any time lose his all: not to mention life and liberty. But a very small portion of that *all* will be as much as his share of the sum requisite for the maintenance of a judge can possibly amount to, in any place inhabited and worth inhabiting. Though the quantity of business arising within a given territory took not up an half, or even a quarter of the time of the judge, yet if the territory is so extensive, that any persons living beyond the circle that bounds it would find themselves beyond that greatest admissible distance, the territory of that judge ought not therefore to be enlarged, much less any other territory tacked on it. In a very thinly peopled country, such as is the Russian

empire in most parts of it, more judges may therefore be necessary in such parts, than full employment for is likely to arise.

The causes which contribute to render the local ground of multiplication a proper one, serve to fix the mark up to which the multiplication of tribunals (and consequently the division of territory for this purpose) ought, and beyond which it ought not, to be pushed.

The inconveniences that may result from occasional failure of justice, by reason of want of promptitude, will, it is true, scarce come under calculation. Those resulting from the constant denial of justice are easily determinable: and on this ground it may be laid down as a rule, that the area of a judicial territory ought always to undergo a further division, if the value of the time that would be saved on the part of all the suitors by such further division would be greater than what it must cost to save it—which is the value of the whole time of an additional judge, added to that of the subordinate officers, whose services form a necessary appendage to the judicial office.

If any consideration could set limits to the multiplication of tribunals on this ground, it would be that of publicity. Publicity has been shown to be the sure and only effectual pledge of probity and all other qualities requisite on the part of the judge. Its efficacy in this respect will be proportioned partly to the number of the individuals of whom the public consists, but still more to the measure of intelligence to be found among them. On this account, for the sake of getting a *good public*, it may be worth while to send the suitor to a greater distance than he need have to go otherwise. On the mere account of economy, it might be worth while to cut down every section of territory, such as the committee's districts, into six or eight sub-sections, such as their cantons: yet in this or that canton, there may be so indifferent a public, and in the chief town of the district so good a one, that in many cases it may be worth while to waive the advantages of *nearer* justice for the sake of those of *better* justice.

But of this consideration alone, what is the result? Not to set limits in any respect to the multiplication and distribution of tribunals: but only to suggest the expediency of permitting recourse to a more remote tribunal in preference to a nearer one.

An obvious expedient for reconciling the opposite demands thus made by vicinity and publicity, is that of *appeal:* when the *near* justice is found not to be *good*, let a man go farther and have better. Hence the use of an appeal from a canton court to a district court.

But double litigation is double expense and trouble. If the second litigation can be saved, in any instance, without any extraordinary expense, so much the better. If the time required by the quantity of business is sufficient to find employment for a district court of immediate jurisdiction, in addition to the canton courts within that district, the interests of vicinity and publicity may thus be reconciled in the first instance. Where, in the opinion of either party, the superior chance of good justice is worth paying for, by the trouble of going to an immediate court, seated in the capital town of a district, instead of a nearer canton court, he may have it. Under such an arrangement, causes which have anything particular in them, either in the way of difficulty or of importance, will naturally find their way to the district court: while the ordinary run of causes will stay, at least in the first instance, in the cantons. And in this way nature will effect, in the most perfect manner, and without any inconvenience, a separation which art and positive law could not, as we shall see, execute, but in a very imperfect manner, nor attempt without very signal inconvenience. On this consideration is grounded in part my establishment of immediate district courts, and the intercommunity of jurisdiction between every such court and the several parish or canton courts within the district, as according to Titles V. and VI.

Under the restriction thus set by these two considerations of economy, it is evident that the multiplication of courts upon this ground cannot be carried too far, nor consequently the extent of each jurisdiction confined within too narrow bounds. A thing much to be wished is, that no court of immediate jurisdiction should have an area so extensive, but that an inhabitant situated at the remotest point of it from the seat of justice might travel thither, do his business there, and return in the course of the day, without sleeping elsewhere than at his own home. Travelling early and late, this, it is presumed, he may do, if the distance is not greater than ten or twelve miles. This measure, not only the cantons, but even the districts, if the seats of justice in them are set down centrically, will, I hope, be found in general not to exceed. To a man who can afford no other means of conveyance than what nature furnishes, ten or twelve miles very early in the morning, and the same journey late in the evening, would be no intolerable hardship. A man who has more easy means of conveyance at command, has, at the same time, less need to regard the expense of a night's lodging from home, and less occasion to incur it. But the persons not thus favoured by fortune are those whose interest ought to set the law; for of such is the bulk of the people made.

I speak of immediate courts: for as to courts of appeal, as in general they ought not in their judgments to take into consideration any other materials than what were possessed by the court below, and as it will not in any

case be necessary that they should engage in any examination of personal evidence themselves, the necessity of personal attendance of parties does not extend to them. But of this under the heads of appeals. What if a district should be found anywhere, whose funds were insufficient to the defraying of this necessary expense? The aid of more opulent districts must be called in. Where there is no justice there should be no inhabitants. And that there should be justice in every territory is scarcely more the interest of the inhabitants of that territory than of all its neighbours.

Expenses, of which all parts of the kingdom have the benefit, should be defrayed by all. It is not therefore merely where a district is unable, but where it is less able than others, that it has a claim upon others for relief. Thus far, then, extends that least admissible number of local judicatures, to the expense of which the whole wealth and population of the kingdom should equally contribute. In a territory of which the population requires a further division of territory and an additional supply of tribunals, the same cause that creates the demand will afford the means of satisfying it. The more people there are who want justice, the more there are to pay for it.

The case above put must surely be ideal in a country like France; unless possibly in the neighbourhood of Bourdeaux. But in some countries, for example in the Russian empire and in America, it may have its application.

As to the number of courts of justice that France could afford to maintain, we know thus much, that, if according to the foregoing definition, it were worth while, she could afford as many as she contains parishes. For she can afford to maintain, and always has maintained, as many ministers of religion as she contains parishes. Better justice without religion than religion without justice. Religion can exist, does exist without ministers: justice never can exist, never has existed, without judges. But what is there between justice and religion so incompatible, as that he who ministers to justice might not minister to religion, or he who ministers to religion, might not, optionally at least, minister to justice? On this consideration stand the passages in Tit. V. of my draught relative to the provisional and optional use to be made of ecclesiastical ministers in the capacity of parochial judges.

The purely *temporal* ground of multiplication may, as hath already been observed, require more courts within a given territory, than it would be very material on the purely *local* ground to distribute. Where this is the case, intercommunity of jurisdiction may be permitted with less scruple: and from intercommunity of jurisdiction, in as far as other considerations allow of it, very material advantages may be observed, as I shall presently have occasion to show.

Taking a country throughout, the purely temporal ground of multiplication, and the local ground of distribution, agree however pretty well in the results they dictate. It is only in towns, that you can find it necessary on account of the quantity of business to set down in the same territory, two tribunals which on account of the distance, it will not be eminently advantageous to distribute.

What must never be forgotten is, that though the grounds for multiplication of tribunals may be two, the ground for dispersing them, and in consequence for parcelling out jurisdiction between them, is but one. This simple and genuine principle of demarcation I style the *geographical* one, in contradistinction to certain spurious ones, of which presently.

As to this principle, it must be observed that, though, when the sections of territory that have been the result of it are very small, for example less than the area of the largest towns, the benefit to be obtained from pursuing it still further be not very considerable, yet that benefit is always something: so that, in whatsoever section of territory the quantity of business requires the placing of two tribunals, it is better to place them at a certain distance from one another than not: and for that purpose to cut down the section into two, how little rigour soever may be thought necessary in guarding the limits between the two sections from being overleaped. Neglecting, therefore, the purely temporal ground of multiplication, as one which can never present any tribunals as fit to be erected, which on the ground of local convenience it would not be advantageous to distribute, we may consider *distribution* as the inseparable accompaniment of *multiplication*, and the *geographical* principle of demarcation as presiding throughout over the establishment of courts of justice.

I seem to have said nothing: in fact, I have said everything. So long as any more courts can be set down to advantage, in addition to such as may already have been set down upon the geographical principle, so long ought more courts to be set down, but still upon the same principle.

When there are so many tribunals erected upon that principle, as it is worth while to have in a territory, more tribunals ought not to be erected on any consideration, or on any pretence. Add but a single tribunal more, on the suggestion of any other principle, what is the consequence? As a court of justice it is useless: as a source of expense it is pernicious.

If anything prevented the application of the geographical principles of demarcation,

other principles might be resorted to, and jurisdiction might be carved out in the manner presented by such other principles. No principle for this purpose has ever been adopted in an extensive country: none ever could have been adopted to the total exclusion of the geographical one. Other principles, however, have been resorted to in concurrence with it, sometimes perhaps because something prevented carrying the geographical principle to the end of its career, but oftener without that reason, without any good reason, and without any cause but the propensity to imitation. But all such spurious principles are very bad succedanea to the only genuine one, having no advantage over it in any respect whatsoever, and being incurably infected with many, and very important, inconveniences, as will presently be seen.

These principles may be all reduced to two: the *metaphysical*, as I take leave to style it, and the *pecuniary*. The metaphysical principle of demarcation is a bad principle: the pecuniary one is a bad modification of that bad principle.

I term metaphysical the principle that gives to one court one *sort* of cause, to another court another sort. Geography is a study as pleasant as it is simple: it is one of the sports of children. Metaphysics, when well applied, though a very useful, is a very dry study: and here, being very ill applied, it is a very pernicious one.

From the sensible world you now find yourself launched into the intellectual. Adhere to the geographical principle, the map of France or England is your sufficient guide. A speculative field now commands and tortures your attention. A new map is now spread before you: a map of causes of action, of sorts of rights, of sorts of wrongs, or of offences which are the infringement of those rights. Spread before you, did I say? No: the legislator has done no such thing for you: he knows not how to do it. He refers to objects as if they were to be found in such a map: but the map, if there be any such thing made, it must be you that make it. It is for want of understanding metaphysics that the legislator talks metaphysics to you, and calls upon you to understand it. On pain that may follow, on pain of life, liberty, or fortune, he commands you to understand that with which, had he himself understood it, he would have known better than to have meddled.

To some of the tribunals, severed by the metaphysical principle of demarcation from the body of those set up upon the geographical principle, the committee give the name of *tribunals of exception*. I give it to all of them.* Tribunals of exception are productive of various inconveniences, which multiply in proportion to the number of such tribunals. Spite of those inconveniences, the very few tribunals of exception which stand in my plan under that name, are not only convenient but necessary, as will be shown further on. Excepting those, of which the committee take no notice, no others are attended with any advantage whatsoever.

An establishment constructed exclusively upon the geographical principle of demarcation, and that pursued to the utmost, is chargeable with one inconvenience, which is the expense. But of this inconvenience a certain measure is inseparable from the establishment upon any plan: it is inseparable from all establishments: and by the supposition the expense is not laid out without fruit. It is chargeable, however, with no other imaginable inconvenience whatsoever. An establishment into which the other principle of demarcation is admitted, is, in proportion as that other principle is pursued, attended with no less expense, and with the following inconveniences, from which the geographical one is free:—

1. Superfluous multitude of courts: hence money wasted to pay unnecessary salaries. So many courts as it is worth while for you to pay for, so many does the geographical principle require: whatever the metaphysical adds, are just so many which it is not worth your while to pay for. Five courts the committee have taken from the geographical principle; courts of appeal included: the canton court, the district court, the department court, the superior court, and the supreme court. Four others they have taken from the metaphysical principle: their high national court, their court of police, their court of trade, their court of administration and revenue: not to mention what they call a reconciliation-office, and I a court for obstructing justice.†

2. Inconvenient paucity of courts: the inevitable consequence of such a superfluity. If five ranks of courts, one above another, are necessary in any one sort of cause, so are they, without any exceptions worth mentioning, in each.

Five times five and once five make thirty: applying the geographical principle to each division made of the metaphysical, they ought therefore to have had thirty sets of courts, instead of thirteen. Their court of revenue, for example, has cognizance of debts due to the state on the ground of taxes: but as four thousand of these courts were too many to distribute among the cantons in addition to the four thousand courts called canton courts,

* Courts-martial, ecclesiastical courts, tribunals, should there be any, on board of private ships at sea, and legalized assemblies, so far as concerns the preserving good order in the assembly.

† See further on, a fuller catalogue of these courts.

the cantons are deprived of the benefit of these courts, which are given to the districts only, to the amount of no more than five or six hundred. But if it be inconvenient to a man to travel from one side to another of a district, to answer to a demand of two or three livres made on him on the part of an individual, it is not at all less so when the demand, instead of being made on the part of an individual, is made on the part of the crown.

3. Useless addition made to the voluminousness of the laws, with which increases always the difficulty of apprehending and retaining them; and the chance that a given disposition of law will in each given instance be ineffectual to its object — effectual only to the purpose of drawing down punishment or other unexpected hardships, for want of having been apprehended or retained.

4. Difficulty of knowing which of so many sorts of courts to resort to. How happy the suitor where there is but one court, *the* court! the simplest of all clowns would not mistake his way to it. Cut courts out of another with metaphysical sheers, a science of that which ought not to have had existence is thus created out of nothing. To the necessary science of knowing whether you have a right and a remedy for it, is added the unnecessary one of knowing to what sort of a judge you are to go in order to get your remedy. In vain have you re-enacted your indefeasible law of nature, and proclaimed the maxim, *Every man his own lawyer*. The hireling laughs at your maxim, and sits down in tranquil certainty of his prey. He knows that, in the very first step in the road to justice, you have built a labyrinth, to which no man has a certain clue, and to which no man but a lawyer can pretend to have any.*

As to the committee, the foundation of their labyrinth is laid; but who shall say, when, or by whom, it shall be finished? — Out of the first parcel of metaphysics come forth doubts: then comes more metaphysics to solve those doubts; and out of the fresh metaphysics arise fresh doubts. At a moment's glance, I see doubts enough to fill a volume: — but who would thank me for it?

5. Subservience to the purposes of publicity is not the least among the advantages of the principle of universal competence. Tribunals of exception cut off the attention of the public from the principal courts, and from each other, and break down the superintending part of it into portions too small to be sufficiently respectable.

In England, as in France, a thousand heterogeneous tribunals, armed with scraps and fragments of jurisdiction, distract the attention of the public, not less than they deform the face of justice. Gather up these fragments, put them into one great receptacle, no part of the publicity will be lost. This, and that, and t'other court, escape from observation; but *the* court, an object deriving greatness from its simplicity, lifts up its head like a landmark, and extorts attention from the most incurious eye.

Ask for the advantages of this complication: they are absolutely none. No, not the smallest particle; not a shadow of advantage. A particular branch of the law, it will be said, will in a particular spot find of itself constant employment for a court of justice. Be it so. What follows? That you ought to have a court empowered to take cognizance of that branch, and no other? By no means. By denying to that court all other branches of jurisdiction, what do you gain? Nothing. — Oh! but the judge may not understand the other branches so well as that particular one. Why so? what should hinder him? Does not every advocate that practises understand every branch? The knowledge which you make sure of finding in every advocate, why should you doubt of finding it in a judge? The judge has the advocate to prompt him: who is there to prompt the advocate? When the book of the law is opened before him, as you intend it shall be, will it be more difficult for him to read one page of it than another? No: if the law has anything in it more difficult than another, it is this very science, which you create out of nothing, under the notion of solving difficulty. What belongs to him, and what does not, is one of the most difficult points which the judge of a tribunal of exception, or the judge from whose jurisdiction a tribunal of exception is severed, has to solve.

The particular branch of business, you say, will be sufficient of itself to fill up the time of one tribunal. So it certainly may be, just sufficient to take up the time of one court, and no more; just sufficient to take up the time of two courts, and no more; and so on. All this is possible: but the chances against its being fact are infinity to one. Is one of these peculiar courts not quite sufficient? Two such courts will be sufficient, and a great deal more. Institute but one of them, all men are delayed, and some go without jus-

* In considering the necessity of advice as resulting from the complication of the system of tribunals, I speak with reference to the current systems of procedure, and such as the plan of the committee seems to promise. According to mine, even this cause, powerful as it is, could not produce any such necessity. The suitor having a right to go into any court, and claim the attention of the judge, the first moment he sees him unoccupied, to his demand, whatever it was, and to the facts, (whatever they were) on which he grounded it it, would lie upon the judge to tell him whether it had any foundation in law; if so, in what part of the law, and to what other judge, if not to himself, it belonged to make it good.

tice. Institute two, the judges of one or both sit idle a great part of their time. I ask, what is the use of their being kept idle, surrounded as they are by fellow-citizens, who, for rights relative to other branches of the law, are lingering without remedy?

Bad as the metaphysical principle of demarcation is, the *pecuniary* is still worse. Why? Because to all the bad qualities of the metaphysical, it adds others of its own. To such a court shall belong the cognizance of such and such sorts of causes, says the metaphysical principle: provided they are not beyond such or such a *value*, subjoins the pecuniary. What follows? That, besides being plagued about the *sort* of cause, you are plagued about the *value*. What if the value of the thing change in the course of the cause? What, if there be several who claim shares in it, or against whom shares are claimed? What if one claimant gives up his share, and makes the thing beyond value? Does the addition of interest to principal, or of costs of suit to both, raise it beyond value? The doubts, that sprung out of the institution of assessors to criminal examinations, are nothing, in comparison with the unobviated ones that might be drawn out of this single word.

But the worst charge against the pecuniary principle is yet behind. It is the being connected, as it is inseparably, with a false estimate of *importance:* in consequence of which, causes of chief moment have been treated in various ways, as if they were of little moment, or none at all.

To detect the false measure, we must lay down the true. View a cause through the medium of public concern, the importance of a class of causes has two measures; its importance to the interest of each individual person concerned in each individual cause, and the number of individuals so concerned.

On both accounts, the importance of a class of causes relative to a sum nominally small, instead of being, what the pecuniary principle always supposes it to be, less than that of a class of causes relative to a sum nominally large, is greater. The importance of a sum to the interest of a given individual, is in its ratio to his income. It is but a small proportion of the people, for example, in France, that have each so much as 200 livres a-year to live on: a very small proportion, indeed, if women and children are to be taken into the account:* the king's brothers are to have each exactly 20,000† times that sum; 2,000,000 of livres. One livre is, therefore, of at least equal importance to the one, with what 20,000† livres is of to the other. It is, in fact, of much greater importance: for superfluity will bear retrenchment, and that in proportion as it is superfluous: a bare subsistence will bear none. Take from a king's brother half his income, he still remains an opulent prince. Take from an ordinary day-labourer half his income, he starves.

Taking this for the true measure of pecuniary importance, the importance of a cause, taken indiscriminately, is rather in the inverse than in the direct ratio of the sum; for as the classes of men are more numerous as they are poorer, and the most numerous of all is the poorest of all, a cause about a small sum is more likely to be the cause of a poor man, than a cause about a large one.

The medium, through which the question of importance has usually been viewed, is of a different tinge. That cause is a cause of importance in the eyes of a legislator, that would be so to a man of his opulence, that is of his dignity, and to the great men, that is, to the rich men he is wont to live with,— of whom alone he is wont to think with any degree of complacency, and who alone are deserving of his care. That cause is a cause of importance in the eyes of a lawyer, which will afford a lawyer such a fee as a man of his dignity may stoop to take. Such a cause is to be summoned up to those superior courts where men of such dignity do not disdain attendance. A cause of no importance is a cause that will afford no such fee. What becomes of such cause, or of the class of people likely to be concerned in such a cause, is a question not worth caring about. The cause and the parties are turned over, without appeal, to some obscure and inferior jurisdiction which does with them what it pleases.

From the notions, just and unjust, that have prevailed respecting the importance of different classes of causes, two principal distinctions have been deduced; one respecting the mode of judicature to be respectively allotted to them; the other respecting the treatment to be given to them in the way of appeal. The latter consideration belongs to the next head: a few words relative to the former may come in here.

When the subject thrives, it is sometimes by the care of his keepers, and not unfrequently by their neglect. Regular justice, as it is called, is the justice which the reverence of lawyers has provided for important suitors and important causes. Summary justice is that with which, in their disdain, they have, in some few instances, prevailed upon themselves to indulge the vulgar herd. Regular justice — that is, dilatory, expensive, refined, justice, and, in every respect, and every instance, the worse for its refinement. Summary justice—that is, cheap, expeditious, and substantial. The division having been made, the distribution could not have been more happy. But the plain truth is, that no such

* M. Claviere, in a late publication, makes the average expenditure of an individual in France, rich and poor taken together, 146 livres a-year.

† Perhaps this should be 10,000 livres. —*Ed.*

distinction ought to have existence. Good justice, it is not less in the power of legislators to bestow, if such is their pleasure, upon the most important causes than upon the most trifling ones: upon the rich than upon the poor. Justice in itself is simple: it is the same for one man as for another: it is only legislators who, by the advice of lawyers, have complicated it, and torn it into shreds. It is neither above nor below any man's level, unless where removed out of his reach by the interested cunning or blundering anxiety of those whose province it is to dispense it.

That summary justice is really the genuine, and regular the counterfeit, is what any one, who has read the observations of Art. 21 of the preceding Title, has, I trust, found some cause to suspect. To convert his suspicions into complete assurance belongs not to the present work, but to the subject of procedure.

If these principles of demarcation have no foundation in utility, how came they, say you, to be adopted? Just as so many other principles came to be adopted in legislation, at first from some narrow private interest, or some narrow view of public good, afterwards from imitation. Force alone decided geographical boundaries: force and cunning together decided metaphysical ones. In the war of all against all, while baron and baron were fighting for territory, lawyer and lawyer were scrambling for jurisdiction. The king's lawyer seized what he could from the baron's lawyer: the baron's lawyer retaliated as well as he was able: the priest stole what he could from both. This was the case all over Europe. In France, this precious branch of metaphysics derived peculiar encouragement from royal indigence: jurisdiction was cut in slices to be sold; and the discovery of a new branch, capable of being stripped off anyhow from the old trunk, was like the discovery of a gold mine. New laws would cause, every now and then, fresh branches to sprout out: and then, what was to be done with them? Distributed among the sets of judges in being? Their hands were full already. New remedies would now and then be thought of for old subsisting rights: the old judges could not, or would not apply them: and new workmen were appointed to the new work. Tired of being without justice, in countries where the extravagance of the price threw it out of people's reach, parts of the people would grow clamorous: their demand would, every now and then, be complied with, as to a few sorts of causes, to a value too small to be worth a lawyer's notice: and thus the pecuniary principle came to be grafted upon the metaphysical in these and several other ways. The artificial principles of demarcation had got so far the ascendant as almost to hide the natural one from view.

The committee found this system of complication in full vigour. What did they? They did as every body must do: go to work upon the old stock of ideas, when time for the discovery of new and better ones is not to be had. When the treasury of error is exhausted, then at last comes truth: when the stores of complication are expended, then at last comes simplicity.

I have spoken of certain tribunals of exception under the name of *necessary* ones. Their bare names might perhaps be received by most men as sufficient proof of their title to that epithet. But a legislation ought not in the minutest article to rest upon the naked grounds of prejudice. Error lurks among unquestioned propositions.

1. Courts-Martial. — Among military men the necessity of the strictest discipline is obvious to every body. Such discipline could not be maintained without military courts. All is lost, if obedience does not follow instantaneously upon command. A soldier might as well be out of the reach of command as out of the reach of instant judicature. In such a service itinerant suitors must be accompanied by itinerant judges. In such a service no one can so well judge of the importance of an order as he who gives it. While the ordinary judge was learning so much of the art as would be necessary to enable him to form his judgment, the service would be going to ruin. Happily they who command soldiers will serve to judge them, so that the nation will not, on the score of this part of the judicial establishment, be loaded with any additional expense.

2. Tribunals, if anything of that sort there be on board of vessels in private service, as surely there might and ought to be, would scarcely come to be mentioned under the head of tribunals of exception, were it not for the state of subordination into which their judgments might be put in the way of appeal, with relation to the ordinary courts. While at sea, if any jurisdiction is exercised over the class of persons in question, it must be by a tribunal of exception: for a judge cannot be on land and out at sea at the same time. While in harbour, the necessity for the tribunal of exception exists no longer; for the harbour is within the reach of ordinary justice. But in this instance nothing hinders but that the judgment given by the tribunal of exception out at sea might, when the vessel returns into harbour, be subject to review of an ordinary court. If so, that court ought, for the reasons given under the head of appeal, to be a court of pure appeal, and not an immediate court.

3. Ecclesiastical courts, in as far as their jurisdiction is confined to the maintenance of ecclesiastical discipline among ecclesiastical men, I have added provisionally to the number of tribunals of exception, merely to avoid

prejudging a delicate question at an immature period. This stable will surely be taken by Hercules for the scene of one of his labours, but surely it will be the last scene. The reason grounded on the supposition of a peculiar sort of skill not likely to be possessed by ordinary judges—this reason, if not altogether so cogent in this as in the military department, is at least at a distant view as plausible. This is no place for giving that plausibility any disturbance.

4. Representative bodies and other legalized assemblies, for the purpose of preserving good order during the continuance of the assembly.—To deny an assembly a tribunal for this purpose, would be to refuse it the right of self-preservation. Without the means of quelling disturbance, and that at the very instant the disturbance was offered, it might never act, for it might be constantly disturbed. A negative upon all its acts would thus be in the power, not only of every single member, but of every idle or malicious stranger.

Cast an eye over the several heads of inconvenience which plead against the establishment of tribunals of exception in general, you will find them either apply but faintly in these instances, or vanish altogether. But any farther discussion relative to points so clear would scarcely be of use.

To these tribunals of exception, of which the committee take no notice, but which they certainly have no idea of abolishing, they add the following ones, which they either create or preserve. I mentioned, I believe, but five of them in a preceding paragraph: for the stores of such a mine were not to be exhausted by a first glance.

I. *New Tribunals of Exception, erected under the express character of Courts of Justice.*

I Family-Tribunal for civil cases. Tit. IX. Art. 11.
2. A different Family-Tribunal for penal cases Tit. IX. Art. 12.
3. High-National court. Tit. XI.
4. Municipal Bodies, under the name of Judges of Police. Tit. XIII.
5. Courts of Trade. Tit. XIV.
6. Immediate Courts of Administration and Taxes. Tit. XV. Art 1.
7. Appellate Courts of Administration and Taxes, formed out of the Superior Courts. Tit. XV. Art. 4.
8. Appellate Mint-Courts. Tit. XV. Art. 13.

II. *New Tribunals of Exception, or Law-Offices of a particular kind, designed to block up the entrance into the Courts of Justice.*

1. Canton-Courts, set up in the character of Reconciliation-Offices, in the way of the District-Courts. Tit. IX. Art. 4.
2. District-Reconciliation-Offices, set up in the way of the District-Courts. Tit. IX Art. 4.
3. District-Reconciliation-Offices, set up in the way of the Department-Courts. Tit. IX. Art. 5.
4. District-Reconciliation-Offices, set up in the way of the Superior Courts. Tit. IX. Art. 5.
5. District-Directories, set up in the character of Reconciliation-Offices, in the way of the immediate Court of Administration and Taxes. Tit. XV. Art. 5.
6. Department-Directories, set up in the character of Reconciliation-Offices, in the way of the immediate Courts of Administration and Taxes sitting on special matters. Tit. XV. Art. 6 & 7.
7. Municipal Bodies, set up in the character of Reconciliation-Offices, in the way of the immediate Courts of Administration and Taxes sitting on other special matters. Tit. XV. Art. 8.

III. *New Tribunals of Exception, or Law-Offices of a particular kind, designed to smooth the road to the Courts of Justice.*

1. District-Reconciliation-Offices attached, in the character of Charitable-Law-Offices to the District-Courts. Tit. IX. Art. 6.
2. Charitable-Law-Offices, attached to the Department-Courts. Tit. IX. Art. 7.
3. Charitable-Law-Offices, attached to the Superior Courts. Tit. IX. Art. 7.

IV. *Old Tribunals of Exception preserved.*

1. Transit-Duty-Courts. Tit. XV. Art. 5.
2. Mint-Courts. Tit. XV. Art. 13.

Intercommunity, I have already observed, is not inconsistent with demarcation. It is necessary there should be boundary lines. Were there none, a plaintiff would not know from what judge he was entitled to assistance: a defendant would not know to what judge he was generally amenable: the judge would not know to what suitors his services were principally due. No man would know how far he might have to go for justice: no man could be secure of finding justice anywhere. Boundary lines once traced, it is not necessary that men should be rigorously confined within them. Convenience was the final cause of tracing them: the cause ceasing, so should the effect.

Upon the application that may be made of the principle of intercommunity of jurisdiction, depend several very essential advantages:

1. Convenience in respect of distance. In general, the court of a man's own parish, canton, district, or whatever the division be, will be nearer to him than that of any other circumjacent one: but if not, why tie him

down to it? In general, it will be more convenient to a man to stay at home, than to go elsewhere: but if business, or pleasure, call him elsewhere, why make home a prison to him? The place most convenient to the one party, is not always so to the other: when interests thus clash, it is for the less to give way to the greater. The convenience of both may point to a spot which is the home of neither: if the judge can spare them any of his time, without prejudice to those who have a preferable right to it, why should the law grudge it them?

2. Giving the greatest number the benefit of the best judicature. In England, under a decline of faculties, this facility has more than once afforded a palliative to the inconvenience of an irremovable judge.

3. Keeping up emulation among judges. Judges of the same rank, especially neighbouring ones, will be rivals for confidence. A sort of perpetual election will then be kept up, but that a quiet one: and the honour of a judge will be measured, as the profit of a shopkeeper, by the number of his customers.

The influence of the principle in this line has been thought to be not altogether imperceptible, certainly, if so, it is not, at this time of day, otherwise than salutary, in English judicature. Though probity requires causes of a more powerful texture, exertion, and the subordinate qualities of affability and good temper, may derive from a circumstance like this, no inconsiderable assistance. Shortly after the Conquest, ignorance drew at random various boundary lines of the metaphysical kind, in the upper regions of justice:* mutual fraud, spurred by sordid motives, struggled, at various periods, to overleap them: the war ended in a sort of *uti possidetis*, productive of a large measure of intercommunity in various quarters. If anything remains, at this time of day, of all that warfare, it is a certain dignified emulation, covered by decorum, and no otherwise perceptible than in the good qualities that flow from it.

4. Preventing conflicts of jurisdiction. When everything that is not fixed in this way by geometry, is made to follow liberty, there is no room for rapine.

I will venture a prophecy: it can be no ordinary measure of virtue, as well as good fortune, that can suffice to disfulfil it. No sooner are the committee's magistrates installed, if peradventure they should be installed, than they will fall together by the ears. Serpent's teeth are the seed: fighting judges will be the harvest: the metaphysical entrenchments thrown up by the committee invite attack, rather than repel it. Convenience will find them adamant: doubt and chicane will find them shadows.

The committee have gone before me in my prophecy. One of the functions of their supreme court (Tit. X. Art. 9,) is to keep repairing these entrenchments as the earth crumbles, and to *quash* judgments that overleap them.

I have a singularity on this head. *Quashing*, the favourite pastime of English judges, has no licence from me. *Nullity*, the choicest instrument of fraud and chicane, is not upon my list. I care not by whom, or in what way, justice be done, so what is done be justice. In my system is neither dispensing power nor vicarious punishment. I give to no lawyer's clerk, to no hackney-writer, a negative upon the laws. I set up in no garret, nor in any cellar, an office for selling pardons. With me, judgments are alterable or reversable, always for injustice, never for *irregularity*. If there be blame, I punish the author of the mismanagement, not the innocent who suffer by it.

5. Insuring the suitor against partial and suspected judicature. The suitors will have nothing left to wish for on this head, if, as often as it happens to the judge to find himself exposed to the action of any cause of partiality, weak or powerful, visible or invisible, he is not only at liberty, but bound, either to dismiss them to another near tribunal, or to disclose to them his situation, asked or unasked, that the party concerned may take his choice.

Such are the considerations which dictated the principle of intercommunity as developed in the series of provisions that form the fourth table in my draft.

The committee have their remedy for this too. If an inhabitant of Provence or Navarre has his suspicions of a judge, he has but to take a walk to the supreme court at Paris. (Tit X. 9.) At the end of a lawsuit carried on in due form, he will get, or he will not get, a judge that he likes better: and then the lawsuit, which is to give him what he wants, or save him from what he fears, is at liberty to begin.

The institution of *circuits* has been spoken of as a master-piece. Great men travelling round the country twice a-year, staying two whole days in a place, and carrying justice home to the very doors of little men. What condescension! Justice at thirty or forty miles distance is certainly better than at three or four hundred. Justice four days out of the 365 is certainly better than no justice at all on any day. The worst possible plan that could be contrived is certainly four times as bad an one as this elaborate contrivance: but the most simple and most obvious, which is to put judges where they are wanted, and to let them stay where they are, is just ninety-one times as good an one.

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* Splitting the *Aula Regis* into the King's Bench, Common Pleas, Exchequer, and Chancery.

English circuits, I understand, have partizans in a respectable assembly in France. What follows is a tribute of respect to those honourable gentlemen.

The denial of justice is no evil — assume but this one postulate, and you may prove that the institution of circuits, as it stands in England, has some colour of advantage.— 1. *It gives you no bad chance of not having a partial judge.* Staying but a day or two in a county, a judge has no time to form connections in it. If country gentlemen never came up to town, and if barristers never went circuits before they were judges, nor ever went the same circuit twice after they came to be judges, they might have no such connexions. Whatever antiseptic virtue there may be in mobility, there is, happily, rather more in paucity, responsibility, and publicity, or judges would not be what they are. *It gives you a cheap establishment.* Send a judge to a place four days, he will cost you but a ninety-first part of what it would cost you to keep him there at the same enormous salary for 365. Keep no judge anywhere, and your establishment will be still cheaper. One thing the argument forgets: that what you save in judges, you spend ten times over in counsel and attornies. Instead of having one judge to pay for all causes, you have two or three counsel of as many different sorts, and two or three attornies, of so many different sorts, to pay in every cause. No cause but what must travel backwards and forwards between town and country several times, without reckoning appeals: and causes do not travel from thirty to three hundred and odd miles for nothing. You have a country counsel to pay, a non-travelling town-counsel, and a set of travelling town-counsel: you have a country attorney to pay, and a town attorney. This is part of what you get by not paying your share towards the expense of a country judge.

If motion be necessary to honesty, nothing hinders your putting your judges into a *roundabout*, so long as you put a seat into it for every county, or whatever else the division be, with a judge in every seat. Complication precedes simplicity. Invention begins in imitation. I had made a model of a roundabout for my judges — I settled my principle of intercommunity of jurisdiction, I moulded it into the form represented in Tit. IV. of my draught, and I threw my roundabout into the fire. I invite the committee to dispose of their twenty sets of tribunals of exception, in the same way. I may show, perhaps, more at length, what they will be gainers by such sacrifice. My roundabout would have cost money, for judges do not dance for nothing. My principle of intercommunity costs not a farthing. When improbity is rendered impossible, contrivances for rendering it somewhat less probable may be spared.

Another thing the argument forgets: that circuits keep defendants in criminal causes in jail, six months in some places, twelve in others, before trial. Oh! but if they had not been guilty, they would not have been put there. Perhaps so; and if so, there is no use in trying them by circuit judges. Several other things the argument forgets—that, between circuit and circuit, evidence vanishes, witnesses are tampered with, justice flies away in a pet, if a witness's watch happen to go too slow: causes lose the best part of their features by being squeezed into a nutshell: time digs a great gulph betwixt delinquency and punishment. But what need can there be to remember more?

If you will have circuits to be good things, keep to metaphors. Corruption breeds in stagnant waters. Assume that judges are waters, and the thing is done.

Three courts, with twelve judges in them, serve, by the help of circuits, for as many jury causes as all England supplies. I will tell gentlemen how they may make twelve judges go as far in France. Enact a law that no man shall sue another for a shilling, without spending thirty pounds before he knows whether he shall get it or no, and as much more, up to three or four hundred, as circumstances may require. The last shilling I have happened to hear of as got in this way, cost the plaintiff 130 pounds, of which, however, by the help of the judge's certificate in his favour, he got back all but the odd thirty. This shilling had nothing to distinguish it from other shillings. When you give £150 for a shilling, you may set down the exchange as something above par, according to the course of English justice. After this, let Frenchmen send to English practice for models of justice.

Do gentlemen suppose that the uses that have been found for circuits were the considerations that produced them? The interest of the individual, or the moment, produces laws in a dark age: ingenuity finds uses for them in a more enlightened one. Do they consider what it was for that circuits were set a-going? It was to enable the great tyrant to swallow up the little ones. While the feudal tree was in full bloom, and castles sprung up like mushrooms, each castle enclosed a giant, who, growling treason at the king, sat banqueting on the favourite food of giants, the blood of the people. For this delicacy he was beholden to his dwarf, who with a lawyer's gown upon his back, sat squeezing the blood out, and conveying it into the monster's mouth. The arch-giant, whose dwarfs, with all their squeezing, could not supply him fast enough, bethought himself at last of dispatching giants-errant to kill the little giants, that he might get their share. As these hunting giants required to be fed till they could find game, it was only now

and then that such hunting parties could be fitted out. At first it was once in seven years, and this was counted a "stupendous effort of magnanimity and benevolence," by the romancers of that time. At last it came to twice in one year, where it stands at present. The little giants were killed, but the giant-killers, instead of filling their places with good men, went on their rounds, as they continue to do to this day.

When a piece of clock-work is set agoing, and heads to look after it are wanting, it keeps on going, whether it be of use or whether it be of none. The old clock-work of revolving judges, having kept on going for so many years, is admired to this day: partly because it was of use when new, but much more because it is so old, that greatest of all merits in the eyes of lawyers.

The National Assembly of France has been charged with madness for pulling down establishments: and because they have done so, the nation, it is said, is miserable. Those who entertain themselves so much with the idea are yet, it seems, to learn, that if you would have a good house in the site of a bad one, you must pull down your bad one. Were the French legislature as careless for the moment, as the English legislature has been ever since it has been a legislature, there might be some foundation for the charge. While the local judicatures of the barons, courts subsisted, justice, such as it was, was to be had for everything. The short proof lies in the period of the first circuits: for if men could have lived seven years without justice, so might they until seventy times seven. With much ado, those judicatures were demolished. Feeling the want of them every hour, we have been sitting upon the ruins for so many centuries, without so much as a thought of rebuilding anything in their room.

Had I the honour of a seat in that house where the miseries of preparatory demolition were so pathetically expatiated upon, I could find in my heart to propose the restoration of these local judicatures. On what ground? Not under the notion of putting a period to oppression: — not under the notion of rendering it possible for the body of the people to have justice: —— I feel full well the weakness of all such arguments. —— No. But for the pleasure of demolishing the work of innovation, and re-edifying that most exquisite of all structures, the old English common law.

CHAPTER IV.

TIT. II. *continued.*—ON COURTS OF APPEAL.

§ 1. *Plan of the Chapter.*

COURTS of Appeal form the subject of this chapter. Under this head, answers will be expected to the following questions: —

1. *Whether* any such courts are necessary, and, if necessary, on *what account?*

2. To what *causes* their jurisdiction ought to extend?

3. At what *places* tribunals of this nature ought to be erected?

4. How many *ranks* of such tribunals there ought to be erected one above another? In other words, How many *degrees* of appeal ought to be allowed?

5. Of what description the *judges* seated in such tribunals ought to be? Whether in the description of *this* sort of judge there ought to be any, and what difference, distinguishing him from a judge of an immediate court?

6. Whether the functions of an immediate court, and those of a court of appeal, ought in any instance to be lodged in the same hands? In other words, Whether *appellate* jurisdiction ought in any instance to be *joined with immediate?*

7. What ought to be the *proportion,* in point of number, between immediate courts and courts of appeal?

The answers to these questions will depend in great measure upon the inconveniences liable to result from the allowance of appeals, and upon the remedies that can be provided against those inconveniences. But the provisions by which those remedies are administered are most of them so many provisions of procedure. This consideration renders unavoidable the anticipating on the subject of procedure in some degree. Not a branch in legislature but what is intertwined with every other. Not a twig can be managed as it should be by him who does not bear in mind a picture of the whole.*

§ 2. *Grounds for the Allowance of Appeals.*

Allow appeals, you suppose misconduct on the part of the judge. Suppose no such misconduct, *rehearing* answers every purpose.

The uses of this allowance are two: 1. To correct wrong decision, whether intentionally so or unintentionally; 2. To prevent decision intentionally wrong, by rendering the accomplishment of its purpose hopeless.

Undue decision is not the only means where-

* Other questions, though relative to appeals themselves, not being necessary to consider with reference to the establishment of courts of appeal, will have no place here: —

1. What, if any, are the *orders from which* appeals may be made, over and above the definitive decree?

2. What are the *changes* which it should be in the power of the appellate court to make in terms of the original decree?

3. Whether in penal causes the door shall be equally open to changes made to the *disadvantage* of the *defendant,* as to changes made to his advantage?

by the object of undue decision is capable of being accomplished: it might equally be so in many cases by delay,* or by suppression of evidence. †

Suppression of evidence may be effected either in a direct way, or indirectly by undue precipitation, or refusing the time necessary for the collection of the evidence. ‡

Appeals, properly so called, have therefore for their necessary adjuncts: 1. Complaints of delay; 2. Complaints of suppression of evidence: of which latter a particular modification is, 3. A complaint of undue precipitation, productive of a suppression of evidence. ‖

It is evident, therefore, that a court of appeal, in order to answer the purpose of its institution, requires to have cognizance of the

* The mischief of delay admits of the following modifications:—

I. In civil cases:

1. So long as it lasts, it is productive of the effect of undue decision, to the prejudice of the plaintiff.

2. It may be definitively productive of the same effect, by operating a suppression of evidence.

3.—or by staving off the decision till the only means, or the most proper means, of administering satisfaction, are out of the reach of justice.

II. In penal cases:

4. So long as it lasts, it is productive of undue impunity on the part of a guilty defendant, and of undue anxiety and impairment of reputation on the part of an innocent one; to which is to be added imprisonment, or other undue coercion, in cases which render the application of such afflictive expedients necessary before conviction, lest in case of conviction execution should be eluded.

5. By effecting a supression of evidence, it may be definitively productive of undue impunity on the part of the guilty, or undue conviction and punishment on the part of the innocent.

6.—or of undue impunity in another way, by staving off the decision till the only, or most proper means of satisfaction, or the most proper means of paying the debt of punishment, are out of the reach of justice.

† Suppression of evidence may be effected in several different ways: for example,—

1. By refusing or delaying to compel the appearance of a person whose evidence is wanted.

2. By refusing to suffer him to be examined.

3. By forbidding him to make answer, or by refusing to oblige him to make answer, to a particular question.

4. By refusing to suffer, or to compel, the production of an article of written or other real evidence.

5. By refusing, in the case of immoveable evidence, to repair to the spot at which alone it can be collected: for instance, to take a view of land or buildings, or to take the examination of a bed-ridden party, or other witness.

6. By refusing to enter upon the record a statement of the evidence, of what nature soever, when collected: or by making a fallacious or imperfect entry of it.

In English jurisprudence, the doctrine of evidence has furnished matter for several volumes. The greater part of them is taken up in settling in what cases evidence shall, and in what cases it shall not, be suppressed. On this head there is scarce a rule in it that is not opposite to common sense, contradicted by practice, and repugnant to every end of justice. For penal cases, you would swear them penned by malefactors; for civil ones, by debtors, to enable them to cheat their creditors.

‡ Precipitation may operate a suppression of evidence, and thence be productive of undue decision in several ways: for example,—

1. By proceeding to *decision*, instead of waiting to receive, or proceeding to compel, *evidence*.

2. By proceeding to hear arguments, or to collect evidence that might as well have been collected at a future time: in a word, by taking any other step that might as well be taken at a future time, instead of proceeding to collect an article of evidence which, if not collected at the moment, may never be to be had at all: for instance, the testimony of a dying man, or a man on the point of setting out upon a long voyage.

In a word, since the bringing forward one step in a cause may be the delaying of another, whatever mischief may be operated by delay in the way of suppression of evidence, may be equally effected by precipitation.

3. So likewise, whatever mischiefs may be operated by delay, in the way of placing out of the reach of justice, the most proper, or the only means of yielding satisfaction, or paying the debt of punishment.

‖ For the mischief of delay, the remedy is an order for expedition: for the mischief of suppression of evidence, measures taken for filling up the deficiency in the body of the evidence.

Of a complaint of delay, the necessary concomitant is therefore a *petition for expedition*: of a complaint for suppression of evidence, a petition for filling up an alleged deficiency in the body of evidence, or more shortly, *a petition for supply of evidence*.

As to precipitation, it has no separate and peculiar mischief of its own; neither can what has been done in this way be undone: there can therefore be no particular petition correspondent to the complaint made upon this ground: if the mischief be that of suppression of evidence, the petition will be a petition for supply of evidence: if the mischief be the placing the means of satisfaction or punishment out of reach, the petition will have for its object such measures as may be best calculated for bringing the objects in question within the reach of justice: if the mischief be of any other kind, the petition will fall under the general notion of an appeal: such precipitation being only a particular mode of bringing about an undue decision.

A petition for expedition is, if there be any difference, still more necessary than an ordinary appeal properly so called. By delay, that is, by indecision, a judge might not only do to the prejudice of the pursuer's claim, all the mischief that could be done on the same side by undue decision, but he might do it without committing himself in any shape. Let a decision be but given, if it be totally groundless, its very absurdity may present of itself a sufficient ground, not only for the reversal of the decree, but for the punishment of him who made it: silence, if allowed, will afford a shelter equally secure to the grossest absurdity and the blackest guilt. Without the means of compelling a decision, the most perfect contrivances for reforming undue decisions would therefore be of little use.

several sorts of complaints just mentioned. It will be found equally true, that it can require a cognizance of nothing more.

The institution of appeals is not merely *useful* to the two purposes that have been mentioned; it is absolutely *necessary* to both those purposes: neither the superintendence of the public eye exercised through the medium of *publicity*, nor the establishing of *responsibility*, civil or criminal, on the part of the judge, nor both these securities put together, can supersede to either purpose the necessity of appeals.

As to publicity, the virtues of it are transcendent; but they are not all-sufficient. 1. They are manifestly insufficient to the correction of undue decision, whether intentionally wrong or unintentionally: they are even insufficient to the prevention of it. Whatever security they may afford against a want of *probity*, they afford none, no immediate one at least, against a want of *intelligence*. They tend unquestionably to increase the measure of intelligence, in as far as intelligence is the fruit of exertion: but in this way their efficacy is unhappily precarious, as well as slow: they will render him who has talents more careful to improve what he has; but they will not absolutely give talents to him who has none. Neither can the security they afford against want of probity, powerful as that security is, be depended upon as being in all circumstances proof against all temptation. The sophistry of the passions may flatter a man with the hopes of eluding the scrutiny of the public eye: the violence of the passions may steel him against the public censure: there are treasures, in competition with which reputation itself may appear to have lost its value. It was not for want of publicity to guard it, that the virtue of Appius sunk under the shock it met with from the beauty of Virginia.

The security which responsibility alone, to whatever extent it be carried — the security which responsibility, civil or criminal, affords against undue decision, is equally short of the mark. Against unintentional error it is nothing: to this cause of undue decision it never can apply. Render a judge liable to answer, though it were with his fortune only, for a mere error in judgment, that is, for an opinion different from that of him who is to judge over him; no man, unless perhaps a man of desperate fortune, would take upon him the office of a judge. The mere weakness of the intellectual faculties is what you can never punish: you can punish for no misconduct in which you cannot charge the will with having had in some way or other a share; you may punish for improbity; you may even punish, so it be lightly, for mere want of attention well demonstrated; but for mere want of natural talent you can never punish.

Against even intentional misconduct in this way, the efficacy of punishment alone is almost equally uncertain and deficient. Innumerable are the occasions in which mischief may be done — infinite is the mischief which may be done, in this line, without leaving any traces of such criminality as punishment can lay hold of. Innumerable are the instances in which, lest you should punish blameless error or excusable inattention, you will find yourself obliged to let go inexcusable guilt. The efficacy of legal punishment in this way, though capable of greater strength than that of the censure of public opinion, is still more limited in its extent. Ignominy will scent out many a lurking-place to which punishment can never penetrate.

Add publicity and legal responsibility together, still, without appeal, the measure of security is incomplete. Expatriation will save a man at once from the gripe of punishment, and from the sting of ignominy. Expatriation, though to some an intolerable punishment, is to others a pleasure. Expatriation for an ignominious cause would indeed, to a judge, be a loss of salary, as well as of reputation. But how often may it not be in the power of a wealthy delinquent to afford to a judge an indemnification more than equivalent for the loss of salary, as well as for every other inconvenience of expatriation? especially if the judge, through misfortune or misconduct, should happen at the time of the temptation to find himself straitened in his circumstances. And the sort of judge whose virtue stands exposed is, it must be remembered, of the lowest rank, and commonly in circumstances assorted to that rank. A delinquent, with a hundred thousand pounds in his pocket, is under trial for a crime, the legal consequences of which would absorb his whole fortune: a sacrifice of half of it would be a gaining bargain. Who shall say that no judge, and that in the lowest rank, shall ever be found, who would prefer such a pitch of opulence in a neighbouring country, to hard duty and a moderate salary in his own?* How

* In the case of undue decision, everything turns upon the state, that is, upon the apparent state, of the conscience of the judge; upon the question, Whether he was or was not conscious of its being undue; except in the case of a fixed principle of honest error, or general incapacity. Particular hardship is but a drop of water in the political ocean: a general sense of insecurity raises an universal storm. This intolerable sensation, this universal storm, a single decision, so it do but appear to be the result of known and intentional injustice, is sufficient to excite. Had it been through mere misapprehension that the daughter of Virginius had been doomed to servitude, the injustice would have passed, like a million of other injustices, without notice; and the Decemvirs might have been reigning to this day. It was Bacon's apology against the charge of corruption, that, whatever he might have made men

often in England might not a supposition of this sort be realized by the plunder of the East!

True enough it is, and not undeserving of remembrance, that were it not for the security afforded against intentional misconduct,

pay for just decrees, he had never sold unjust ones. The excuse, true or false, was little to the purpose; for, as it was notorious that he took money for his decrees, and disputable whether they were just or no, the Court of Chancery wore, in the eye of the public, the appearance of a great auction-room, in which all the fortunes of the kingdom were selling to the best bidder, for the benefit of the judge.

Motives, even of the purest kind, if they present to the public eye the prospect of insecurity, may, in this way, produce to a certain degree the evil consequence of corrupt ones. Such is the case where the judge takes it into his head to turn legislator, and to substitute to the bad laws, which it is his business to execute, better ones of his own making. Everybody knows in England what an alarm was taken by lawyers, and through them by a considerable part of the public, on account of two or three decisions given, not a great many years ago, more conformable, it was supposed, to reason than to law. Conveyancers were up in arms: *Not a will nor a settlement can we pretend to draw*, said they, *which this man with his improvements may not turn into waste paper.* Shall absurdity have been worshipped in my predecessors, and shall not reason and good sense be tolerated in me? He had miscalculated. The times are over, when judges might decide absurdly, or rationally, as they pleased. Something of a public is formed in England; and a public which, with all its fondness for old abuses, will not submit to new.

To this head may be referred one of the chief advantages attending the institution of juries. The most sanguine admirer of that institution can never seriously suppose that, on the part of a random assemblage of uneducated men, unused to judicature, the chances of erroneous decision can in each instance be less than on the part of a man of education who has made it the business of his life: but, as the composition of this tribunal changes at every cause, men flatter themselves, vainly flatter themselves, that in so fluctuating an assembly no fixed principle of error can perpetuate itself.

In the case of undue decision, which has for its source neither a corrupt principle, nor a principle of any other kind that threatens a repetition of the grievance, the mischief may in most cases be set down as nothing. It may in all civil ones. Take into the account the interests of the parties merely, and suppose the expectation of success equal on both sides; decide as you will, you do just as much good and just as much harm by deciding one way as the other. A decision has been given, erroneously suppose, though upon the merits, to the prejudice of the plaintiff. What harm has been done by this upon the whole? Not any. Whatever suffering the plaintiff has undergone in consequence, so much suffering has been saved to his successful adversary. This, it is true, would not have been the case, upon the supposition that the expectation of success on the part of the winner had been less strenuous than on the part of the loser: as it may be supposed to have been, if, without any opinion of the merits, the defence had been made merely through a temporary inability to comply with the demand, or in order to stave off the evil day of compliance.

But this, in the instance put, cannot be supposed to be the case. The defendant's cause has appeared just in the eyes of an impartial judge: is it likely that it should have appeared less so in his own?

In penal cases, it is true, the mischief of erroneous decision is of a more substantial nature. If to the prejudice of the defendant, undue and useless suffering is the consequence. Happily, this misfortune, in proportion as it is important, is unfrequent. Whatever may be said by honest concern or hypocritical affectation, the propensity of human nature lies the other way. No man, however depraved, does mischief without particular reasons for doing it: still less a judge, who risks so much by doing it. If an incident of this kind be but suspected, it makes an event, and the whole country rings with it. In a country like France, I should be much surprised to find that the whole number of unjust sentences of all kinds, exclusive of such as may have been meant to be so, had ever amounted to ten in the compass of a year.

Errors on the other side are beyond comparison more natural, and more numerous, even under the harshest system of justice. And errors on this latter side are, in some of the most frequent as well as mischievous of crimes, in fact, more pernicious than on the former. Punish a man erroneously as for a homicide committed in prosecution of a design of robbery, you punish that one man. Acquit erroneously a man guilty of the same crime, you sacrifice the lives of all those whom destiny has marked out for victims to his future enterprises. The English procedure, favourable to malefactors as it is harsh and ruinous to honest men, has forgot to provide correction for the most palpable errors on this side: and this forgetfulness, or this blindness, has obtained, from a deluded public, the praise of humanity and wisdom.

Such being the case, the chance of error on this side will not, in England at least, and by the admirers of English judicature, be added to the list of the reasons that call for the institution of appeals: in my estimate, it would tell as one, though that not of itself a sufficient one.

Thus stands the matter where the point in controversy has been the matter of fact. For on decisions relative to the mere matter of fact, suppose every source of undue decision, and thence all ground for a public sense of insecurity, out of the question, none but the parties and their immediate connexions are at all concerned.

Let the decision turn upon the point of law, and suppose no such provision made as that suggested in the text, the case is otherwise. Every decision made upon the question of law has, in as far as it is known, the effect of a new law; which, in this case, being unconformable to the will of the legislator, is by the supposition a bad one: it leads the judicial power, and on pain of worst consequences compels them, to give similar bad decisions in all future cases of that sort. Adopt the institution above suggested, stop the current of future bad decisions by the hand of the legislature, the mischief of the bad decision, though a decision on the point of law, is no longer general but particular, and stands on no wider basis than if the decision had been given on the mere question of fact.

the benefit to be reaped from the institution of appeals, as a corrective to unintentional error, would hardly pay for the expense. The only considerable mischiefs liable to flow from the latter source, might be cured by other means at a much cheaper rate. The utmost mischief that can result from a single decision so circumstanced, abstraction made of the influence that decision may have upon future ones, is of small account. Whether it shall or shall not in that way cast any prejudicial influence, depends upon the legislature. If it was the matter of fact only that was in question, no such influence can have place: if it were the matter of law, a word from the legislature is sufficient to put a stop to it. Of a decision on the point of law, the effect is, to declare what on the point in question is the will of the legislature. If the declaration be right, there is no error in the case: if wrong, a false law is given as to that sort of case, instead of the true one. But it is the fault of the legislature, if laws that are none of theirs are suffered to be given under their name. A committee of revision, to watch over the interpretations given of the acts of the legislature by the courts of justice, and to report such as appear to have erred from the mark, that their influence, *as to the future*, may be stopped, is a remedy equally commodious and indispensable. For a committee of this sort some work is already found by Articles 11, 13, and 15, of Tit. I. in my Draught.*

Whether the question turned upon the written, or upon what is called the *unwritten* law, so long as that most pestilent of all nuisances is suffered through necessity to continue, need make in this respect no sort of difference. The disease, it is true, is always more apt to break out in this bastard sort of law than in the legitimate: but the cure is not less easy to apply in the one case than in the other. If a sore place is observed in the unwritten law, put a patch of written law upon it, and as far as the patch extends, the inconvenience is no more.

All this proceeds upon the supposition of a legislature constantly awake, such as that of France, since the broad day-light it has cast upon the face of the political world, can never cease to be: not of a legislation like the British, habitually asleep, unless when roused by the spur of some paltry private interest, or momentary public one.

* I say, *as to the future:* to extend the effect of the interpretation to the past, would be to turn the legislative assembly into a court of appeal, and the time of the legislature would be consumed in judicature. In the one way, the only cases about which the legislature will be occupied, will be those in which the interpretation given in the courts below has appeared erroneous in the eyes of the *committee:* in the other way, the legislature would be troubled with all the cases in which the *unsuccessful party* thought it erroneous, or for the purpose of delay found his account in pretending to think it so

§ 3. *Inconveniences of Appeal, with their Remedies.*

If courts of appeal were any thing less than necessary, the institution would, it is evident, be far from eligible. Expense to the public is interwoven with the establishment: expense and delay to the suitor, and thence frequently a failure of justice, is inseparable from the proceedings. Institute more ranks than one, the measure of these inconveniences is increased in a great degree, though not absolutely doubled, at each rank. In what places courts of this sort ought to be set down, and thence how many ranks of them, in a country like France, there ought to be, are questions that will meet us farther on. Thus much in the mean time is evident, that the efficacy of the remedies that can be found for these inconveniences is a consideration by which the number of these courts to be provided, and the stations to be allotted to them, connot but be influenced in a considerable degree: a general view of these remedies must not therefore be omitted here. In all the established systems, large tribes of causes are excluded from the benefit of appeal, on consideration of the expense. Is the exclusion a necessary or justifiable one? To this question no answer can well be given, till after consideration had of the reductions that are capable of being made in the expense.

All the inconveniences above mentioned must have place, in a greater or less degree, although appeals were never to be preferred any otherwise than *bonâ fide;* that is, accompanied with a sincere persuasion of right, and suggested by a pure desire of justice. To such only can the institution propose to itself willingly to give admittance. The misfortune is, that, along with *bonâ fide* appeals, *malâ fide* ones will be liable to slip in: appeals in the preferring of which a man is conscious he is in the wrong, and which he prefers with no other view than that of gaining some undue advantage. Allow this privilege, you must expect to see it oftentimes made use of to no other end than to the staving off the evil day, when satisfaction is to be made or punishment undergone: you must expect to see it made use of for the sake of loading the adversary with expense, and what by the delay, and what by the expense, producing a failure of justice. Such are the uses which you may be sure will be made of it, in as far as ignorance or negligence has left room. To the list of remedies against the inconveniences of appeals in general, must therefore be added another list of remedies, calculated to prevent not only the inconveniences resulting from, *malâ fide* appeals, but the appeals themselves.

First Remedies against the Inconvenience of Appeals in General.

1. At the head of the first of these lists,

may be placed the establishment of the maxim, that *the appellate court shall receive as grounds for its judgment, no other documents than what have been submitted to the observation of the court appealed from.*

This maxim is in a manner a necessary consequence of the use and definition of an appeal. An appeal supposes error on the part of the judge appealed from: suppose no such error, there is neither ground nor use for it. A *rehearing* would have been the more simple and equally effectual remedy. But it is no error in a man, not to have profited by documents not within his reach. Add any one document whatsoever to those which he had before him, his judgment might have been altogether different. Under such circumstances, judgment in appeal would be correction where there has been no mistake.

From this maxim, if steadily adhered to, result several capital advantages:—

It gives liberty to choose the fittest situation for the court of appeal, with little or no regard to distance. Were a set of witnesses to have to travel five or six hundred miles upon every sixpenny cause, from an immediate court at Perpignan to a court of appeal at Paris, or a judge of appeal to travel from the judgment-seat at Paris to the abodes of the witnesses at Perpignan, the grievance would be intolerable. But when all there is to convey is a parcel of papers, when once they are put into the post, whether they have sixty miles to go or six hundred, makes in comparison but little difference.

It saves the expense and delay of a repeated collection of the evidence. By the virtue of this single rule, the burthen is thus reduced almost a half.*

The operation of this fundamental measure of economy may be made to receive considerable assistance from several subsidiary provisions.

2. Transmission of the record† from the court below to the court above, by the post, and that gratis, and without passing through mercenary hands.

3. Power to either party to take the judgment of the court above in the first instance, upon mere view of the record, without argument; but without being precluded from the right of arguing, if the decision given on the mere view of the record be not satisfactory.

4. Like power, upon subjoining to the record a written argument.

An appellant or respondent may by this means take two chances, if he pleases, for a decision in his favour, before he puts himself to the expense of engaging an advocate to plead *vivâ voce* at the court above. The decision not to be conclusive against either party, till he has been at liberty to be heard by an advocate; but to be conclusive against him in the first instance, if he has availed himself of that liberty.

In all this there is no expense but the mere copying of the record; an operation which the appellant himself might be allowed to perform, if he were able, and thought it worth his while. I mean, except an advocate be employed: and then there is no need of an attorney. The pursuer or defender-general, as the case is (see Tit. XI. and XII. of my Draught,) at the court above, upon the fee's being paid to the corresponding advocate-general at the court below, may be charged with the transmission of it to the professional advocate. Whether this advocate be employed in the metropolis, or in a country town, need, in point of expense, make little difference.

5. Interdiction of all appeals from interlocutory orders; in other words, from decrees other than definitive, on any other ground than that of irreparable mischief: as if the effect of the interlocutory order complained of would be an irrecoverable deperition of indispensable evidence. It is evident that where an interlocutory order would be attended with any such effect, it stands upon the footing of a definitive decree.

From an interdiction of this sort, no prejudice to justice can arise. If, notwithstanding the interlocutory order complained of, the definitive decree is such as the complainant would have wished, the appeal would have been of no use: if otherwise, it is then time enough to appeal; and one appeal at that ultimate stage answers every purpose of

* In England, in civil cases, an appeal is allowed, under the name of a *new trial*, from one jury to another, at the discretion of the judges from whose court the action was sent to be tried, upon hearing the report of the judge who presided at the first trial, and the arguments of counsel upon the report. But the evidence must all be delivered over again, and the labour of the first trial is all lost upon the second. Whether the trial is meant to answer the purpose of an appeal, or of a rehearing merely, or of a supply of evidence, makes no difference; nor is any notice taken, upon the second trial, of what had passed upon the first.

† By the word *record*, I beg once for all to be understood to mean what a record ought to be: a complete history of the proceedings in the cause, including the whole body of the evidence: not the hodge-podge called in English law-jargon a *record*, a mess made up of one grain of truth to ten or twenty of lies and nonsense. The reading of an English record is a felicity to which no Frenchman who is not master of English, must presume to aspire: for in the French translations of Blackstone's romances, the formularies, containing the marrow of the science, are barbarously omitted. The predilection which, with a degree of readiness peculiar to that generous nation, has been so generously conceived in favour of English jurisprudence, has therefore no other basis than a mutilated copy of a tawdry and deceitful picture.

twenty appeals at so many intermediate stages. Well or ill grounded, appeals from interlocutory orders are therefore equally useless.

In the case of a complaint of delay, or a complaint of suppression of evidence, the maxim forbidding the admission of fresh documents cannot, it is true, be adhered to.

In the case of delay, the very foundation of the complaint is, that no documents at all have been collected by the court below, or at least not enough to form a just basis for decision.

In the case of suppression of evidence, the complaint is, that certain documents which ought to have been collected, and without which the collection would be incomplete and fallacious, have not been collected.

In both these instances the grievance is, that documents which ought to have been submitted to the observation of the court below, have not been: so that, were the appellate court not *to receive as grounds for its judgment any other documents than what at that stage of the cause have been submitted to the observation of the court appealed from*, its judgment must be ill-grounded.

In these cases, then, one of three things must be done: the court above must itself interpose, and collect the deficient evidence, or it must reimpose that task upon the court appealed from, or it must transfer it to some other.

1. To employ the first expedient would be employing the court of appeal about the business of an immediate court; a confusion of powers which, as we shall see more particularly a little farther on, would be attended with several inconveniences:—1. It would necessitate the institution of courts of appeal as near to the several scenes of action, and consequently in as great number, as the immediate courts. 2. It would occasionally surcharge the courts with an extraordinary load of business. 3. It would deprive the suitor, as to so much of the proceedings, of the benefit of appeal. 4. It would enable the judges of appeal to make approaches to arbitrary power, by swallowing up the functions of the immediate courts, and substituting in the room of an authority subject to appeal, a power exempt from that controul.

2. Committing to the judge appealed from, the business of repairing his own errors, is what certainly may be done, if no fault of the will, no improbity, no proud or capricious pertinacity, is attributed to him. But the great necessity for instituting appeals and complaints of this nature results, as we have seen, from the danger of a vice of this sort that might otherwise introduce itself into the character of the judge. This resource can never therefore be trusted to as the only one.

3. There remains that of giving the commission to a judge of some neighbouring court. This is an expedient free from all objections, and forms but one out of many instances of the application of the *principle of intercommunity* of jurisdiction, the advantages of which have already been represented. (See Chap. III.)*

The less the expense of the proceedings in the courts below, the less heavy will the small portion of expense which we have found to be inseparable from the business of appeal, press upon the suitors. The following sketch will afford a glimpse of the means that may be employed for reducing the expense in the first instance:—

1. Abolition of all law taxes, as proposed by the committee. *See* Tit. I. Art. 5, *Committee's Draught.*

2. Abolition of all court fees—of all dues paid by suitors to persons employed by the public in the administration of justice. This also *seems* to be proposed by the committee. *Ibid.*

3. Confinement of the expense of mercenary law-assistance to the instances where it is absolutely necessary, by the admission of unmercenary. *See* Chap. I. *Observations on* Tit. I. Art. 20, *New Draught.*

4. Reduction of the expense of mercenary assistance, where it is necessary, by the abolition of the distinction between advocates and attorneys. *Ibid.* Art. 21.

5. Abolition of the expense of taking mercenary opinions, by obliging the judge to give a categorical opinion in the first instance upon

* A complaint of delay, or suppression of evidence, it may occur, is a sort of cause within a cause; and every cause must have its evidence, its grounds, to go upon. But the very complaint here is, that the judge below will not collect evidence. What remedy? Several. In default of the judge, the pursuer-general may be required to collect the evidence relative to this incidental cause: in his default, the defender-general. In default of both those public officers, the private individual, the appellant himself, must certainly try his own credit with the court above. This he may do, either in person, or, if the distance be too great, by letter, provided it be under the sanction of an oath, in manner hereinafter mentioned: but in a case like this, he can be in no want of witnesses: as to whatever allegations or other documents he demanded to have transmitted in form of a record, and to which the magistrates in question refused to give that authentication, he has but to call in the attestation of any bystander.

These are cases just possible, but not at all supposable. A public magistrate will not venture upon an act of misbehaviour, which admits of no colour of defence. A judge may have good reasons for delaying a cause; he may have plausible reasons for suppression of evidence: but for refusing to give his attestation to allegations on either side, which the law expressly ordered him to record, he can have no excuse. It will be a crime on his part; and the proceedings against him will follow the course marked out, with relation to other crimes.

a state of facts agreed upon by all parties interested, and an hypothetical one upon a state of facts disputed on any side. *Ibid.*

6. Termination of the cause at the same hearing in which it commences, whenever it happens to be ripe for decision at that period: as it will be, if the parties attend in person, and the cause rests solely upon the evidence of the parties, or upon such real evidence, or the evidence of such witnesses, as they happen to bring with them, or upon the mere question of law, or upon all or any of these grounds. *Ibid.*

7. Clearing the cause, by mutual admissions, at that early period, of all facts on each side which are not meant to be contested on the other: — another consequence of the joint appearance of the parties in the first instance in presence of the Judge. *Ibid.*

8. Clearing the cause of all false allegations, the truth of which he who makes them has no real hope of being able to make good, and of all proof relative to such allegations: — another consequence of the personal appearance of the parties, speaking upon oath. *Ibid.*

9. Confining the quantity of delay granted to the quantity absolutely and honestly requisite for each particular purpose in each particular cause: — another consequence of the personal appearance of the parties, speaking upon oath, and of the avoiding to lay down general rules of procedure relative to time. *Ibid.*

10. Facility given to the compromising of the cause in that stage, with the advice and assistance of the judge, if it be a case fit for compromise. *Ibid.*

11. Reduction of the expense of the attendance of witnesses, by powers for the examination of them each in the court of his own territory, so far as confrontation is not necessary: and for appointing confrontation, where necessary, at the court where it can be performed at least expense.

12. By confining the territories of immediate courts to such an extent as admits of witnesses and suitors attending in court during the *juridical day*, without being obliged to sleep elsewhere than at their own homes.

13. By managing the business of examination of witnesses in distant courts, by instructions sent from court to court gratis, by the post, without the necessity of passing through mercenary hands.

14. Saving of the delay of waiting for parties or witnesses lying under a temporary inability of personal appearance, by powers for admitting them to correspond with the court in writing, in the style of an ordinary letter, and, though under the sanction of an oath, without the obligation of calling in mercenary assistance to put it into form: or else requiring the judge to examine them at their own homes, according to the importance and urgency of the case.

15. Reduction of the expense of copying, with regard to sundry sorts of papers, such as acts of the parties and of the court, by providing concise and printed formularies for every such paper, as far as the case admits, settled by the legislature, and furnished at the public expense.

16. By measures to be taken to prevent any body's having an interest in adding unnecessarily to the bulk of such instruments as do not admit of settled formularies.

17. Transmission of law-papers in general by the post, carriage free, from court to court, through the judge, or one or other of the public advocates, without passing through mercenary hands.

Second Division of Remedies against the Inconveniences of Appeal — Remedies for the prevention of malâ fide *Appeals.*

I. *In civil cases:*

1. Execution notwithstanding appeal, on finding security.

This salutary expedient is made use of by the committee, though only in certain instances.

2. Allowing *extra interest* upon the value claimed, payable of course, but susceptible of being remitted, upon certificate of opinion, on the part of either judge, that the appeal was a *bonâ fide* one.

Confine the quantum of interest to the ordinary rate, you give a dishonest suitor the power of borrowing money at that rate of a man who does not choose to lend it him — of a man whom he has injured. What can be more iniquitous, or more encouraging to iniquity? — allowing under-interest, or no interest at all, in the manner of the English law.

There are cases where, in this way, after fighting the plaintiff with his own money, a defendant is secured in the quiet possession of a considerable part of the remainder. The profit allowed by the law to be made in this way is in proportion to the quantum of the capital the defendant has in his hands; that is, to the enormity of the injury the plaintiff is suffering from the want of it. The sorts of appeals called *writs of error* have seldom any other object.

3. Obliging the unsuccessful party to reimburse to the successful one the amount of his *costs*, in course, subject to reduction in case of certificate of *bona fides*, as above.

4. Refusing the appellant the liberty of employing a mercenary advocate on the appeal, but on the terms of transmitting, together with the fee for his own advocate, a fee to equal amount for an advocate to be chosen by the respondent. The condition liable to be dispensed with, where the pecuniary circumstances of the former are emi

nently and notoriously inferior to those of the latter.

If one man could get a better chance for justice than another by paying money to the Judge, who would not cry out against the iniquity? But is there less iniquity in allowing justice to be put up to auction in this manner, for the benefit of advocates?

A fee that is not too much for the appellant's advocate, cannot be too much for the respondent's: for the record which contains all the instruction they either of them ought to have, is one and the same to both.

Objection. — You destroy all emulation, all motives to exertion, on the part of the advocates at the appellate courts. — *Answer.* The necessity of exertion is produced as effectually by the superior chance of obtaining fees, as by the superiority of fees. What extinguishes emulation is, not limitation of profit, but monopoly.

5. Obliging the party at whose instance evidence, deemed impertinent by the judge, is notwithstanding collected, to *advance* the *costs* on both sides of so much of the proceedings: such part of the costs not to be refunded to him, though the cause should be decided in his favour.

6. Allowing the plaintiff, of course, a *satisfaction* for so much of his *time* as has been consumed in the course of the cause; subject to abatement in consideration of *bona fides* on the part of the defendant, or of the state of pecuniary circumstances on both sides.

7. Allowing the defendant satisfaction for time thus consumed by unnecessary proceedings carried on at the instance of the pursuer, though the latter should gain his cause.

The fifth and seventh of these expedients are calculated to prevent vexation, as well on the part of a plaintiff as a defendant. In general, *mala fides* will at least be fifty times as frequent on the part of the latter, as on that of the former: for the great demand for compulsive justice is produced by the defendant's unwillingness to comply with the demands of justice, or his inability to comply with them without inconvenience: cases of doubt are comparatively but rare; and if doubt were all, everything would be done by arbiters; there would be no need of judges.

As the defendant has nothing to gain by a decision, and everything to lose, it is his interest to prevent a decision, whether he be or be not in the right, unless the law has taken care to make it otherwise: whereas the plaintiff has nothing to hope for, as far as benefit to himself is his only object, but from a decision. But the heart of man has affections in it, of the dissocial kind as well as of the self-regarding; and views of mere vexation may instigate the pursuit of an unjust or frivolous claim, as well as the non-compliance with a just demand, if no remedy is provided. A small latitude in this way will be sufficient to lay the poor at the mercy of the rich. If one man, by spending from a hundredth to a hundred-thousandth part of his own fortune, can be the destruction of another's, malice or the lust of dominion may purchase gratification at a cheap rate. The English law, by the matchless enormity of the artificial burthens it has thrown upon justice, and the ingenuity it has shown in their distribution, has insured this gratification to every man who can afford to give a handsome price for it. In doing so, it has conferred on every man an arbitrary power over every other man less favoured than himself by fortune: a tyranny which nothing has prevented from being intolerable, but the influence of public opinion — that sacred power, against which English judges, by the laws they have made in matters of libel, wage undissembled war, and which, from the days of Lord Coke to the present, they have never ceased doing their utmost to destroy.

II. *In penal cases:*

1. In case of pecuniary punishment, adding interest from the time of the sentence in the immediate court.

As to the committee, they too have their contrivances for keeping down expense. In one court, causes are to be carried on without writing;* in two others, by nothing but writing:† and from these opposite causes the same good consequence is to follow. They have another expedient for preventing expense; which is, to say there shall be none: but the expedient, being a choice one, is to be produced but rarely.‡ In this place, I must beg a word with the committee. So, then, it is you that we have to thank, and not nature, for whatsoever there is oppressive in the expense of justice? A word from you would ease us of it altogether: and this word, except in the instance of two sets of courts out of about five-and-twenty, and in them only in a few inconsiderable cases, you refuse to speak for us. Look over your list of law expenses: take any article in it you please: either it is preventible or unpreventible. If unpreventible, how can your saying there shall be no expense, save the expense? If preventible, why will you not prevent it?

To make the more sure of having no ex-

* In the canton-court. See committee's draught, Tit. III. Art. 2. "Les parties seront entendues devant le juge de paix, *sans* qu'elles puissent fournir aucunes *écritures*....."

† In the court of administration and taxes. Ibid. Tit. XV. 3. "Si l'affaire ne peut pas être conciliée, elle sera portée au tribunal d'administration, qui décidera en dernier ressort, *sur simples mémoires, sans forme de procédure et sans frais.*" So in the superior courts; ibid. Art. 4: but in both courts, only in particular cases.

‡ Only in the instances just quoted.

pense, they will have no form of procedure in these cases.

In this place lurks another confession, not less valuable than the former. The form of procedure they mean to give us, being of the regular, and not of the summary kind, I pronounce, very summarily, to be good for nothing. Rash will they call me, for thus speaking of their work? No; I am obsequious: for such is their own opinion of it. Else why deny men the benefit of it in any single instance?

Is it that truth is material in one sort of cause, immaterial in another? material, when the money is due upon a contract; immaterial, when it is due on the score of taxes? Is it that the system is good for finding out truth in the one case, and not so in the other? *That your system is good for nothing in one case, I prove by yourselves, for you are ashamed to use it: that, being so, it is possible it should be good for anything in any other, lies upon you to prove.*

Whence all this inconsistency? I have put the question: I will give the answer.

General prejudice dictates general rules: private importunity squeezes in exceptions. The careless and submissive suffer; the refractory grumble, and get relief. Such is the general history of the creation of laws. Expensive justice is what gentlemen have been used to. Justice, of course, is in general to be expensive. I see them going the rounds of their five-and-twenty sorts of courts, with a waggon-load of it in their train, dropping a budget of it at each court. In other places, all well: but when they come to their court of administration and taxes, they hear grumblings. Heyday! what is all this for? what do you do with your budget here? What! do you think we will be saddled with it? Nay, good gentlemen, dear gentlemen, all a mistake, a mere mistake, if you will believe us — the budget was not meant to have been left here — say no more, gentlemen; you shall see no more of it.

Do they think to get off so? They are mistaken. There is a voice that shall follow them through all their courts, and cry out in every corner, *Away with your budget! None of your burthens here!*

§ 4. *In what Causes Appeals ought to be allowed.*

In what? The simple answer is — in all. It is not less just than simple. For where is that cause which may not give birth to error? Where is that cause which may not, by some unfortunate coincidence, furnish inducements to prevarication? The principle of intercommunity of jurisdiction, and the sort of confessional in which I have placed my judge, might be sufficient, in my own opinion, to protect his virtue: but so long as more are to be had, it is not two nor twenty strings that should be deemed sufficient for the legislator's bow.

Two considerations have been relied on as grounds of difference: *importance* and *difficulty*. The more important the cause, the greater the mischief, in case of wrong decision: the more difficult the cause, the more probable that mischief. Neither are sufficient:

I. Not importance; and that for several reasons.

1. Importance in causes varies not between class and class, but between individual and individual. Classes may be picked out in which you may be sure of finding importance in every individual instance:* but none can be picked out, in which you are sure of finding none. With regard to pecuniary concerns, this has already been shown to be the case. There the vulgar reckoning has been shown to be doubly in fault, in supposing the existence of unimportant causes, and in attributing the least importance to those which possess the most. Yet it is in the pecuniary class that unimportant causes should be to be found, if anywhere.

2. If importance sufficient to call for appeal is not wanting in the least important *sort* of civil cause, still less can it be in the least important penal one. Pure from *mala fides*, a slight injury is of slight importance. Envenomed by that alarming accompaniment, the most trifling one becomes serious. It betokens an affection which, if neglected, might prove an inexhaustible mine of all sorts of injuries. Pounds are made of farthings: leave farthings unprotected, you leave pounds in the same case. *Gutta cavat lapidem.* Sprinkled on a man's head by the hand of undesigning nature, a drop of water is but a drop of water: multiplied by the malice of cruel man, it creates what is said to be one of the most excruciating of tortures. In corporal injuries, then, as well as pecuniary, importance rises and falls not more between class and class, than between individual and individual. Thus shallow is the policy which, under pretence of aversion to litigiousness, refuses to look at injuries till they have ripened into crimes.

3. Degrees of importance, if any such existed, would require metaphysical lines to mark them: and all such, we have seen, are naught.

II. Difficulty is a ground equally insufficient: for, in point of difficulty, too, the variation is not between class and class, but between individual and individual.

Where should the line be drawn?

1. On the point of law? But who shall say, beforehand, in what quarter there shall

* Causes, for example, relative to the condition in life of an individual, in respect of the relations of husband or wife, parent or child, &c.

be obscurity in the penning of the law, and in what quarter there shall be none?

2. In the unwritten law? Obscurity is indeed of the very essence of that supposititious kind of law: but who shall draw the line betwixt its lightest and its darkest shades? Sooner might the obscurity be dispelled, than the degrees of it marked out and circumscribed.

3. In the point of fact? But who shall say in what sorts of causes there shall be obscurity of evidence, and in what others there shall be none?*

But were it even as easy to draw the line between unimportant and important, between plain and difficult, as it is impossible, what pretence can there be for depriving of the benefit of a revision the plainest and least important cause, after the view that has been given of the facility of reducing the expense of a decision in the first instance to so moderate a scantling, and that of appeal, on the side of the respondent, absolutely to nothing? (See § 3.)

These considerations have not found favour in the sight of the committee. To the mercy of their canton judge they commit without controul fifty livres at a time;† almost a third part of a Frenchman's annual expenditure:‡ a sum equal to 666,000 livres in the first class of income. Single as he is, I cannot reconcile myself to this judge. I have looked at him again and again, and I can see no bridle in his mouth. Singleness in a judge gives tightness to a good bridle, but it will not do instead of one. I see him busying himself among the peasantry, like king stork among the frogs. His good-men-and-true, whom the committee have given him for company, may croak tales of him if they please, but they can do no more: they are no less helpless than their brethren. He is required to take their opinion: but what is opinion against will?

To the mercy of the five judges of their district court, or of any three of them, they commit more than a year and six months of a man's expenditure; ‖ a sum more than equal to 3,333,000 livres in the first class of income.

To the mercy of their high national court they trust the lives and fortunes of the whole nation, in I know not what new and undefined cases; and this not only without the check of appeal, but without the check of any kind of responsibility, civil or criminal, in case of prevarication: trusting to the title of *high*, to the name of *jurymen*, and to the inexhaustible virtues of *numbers*, as a security for good judicature. But of this a little farther on.

§ 5. *To what* Place *Appeals ought ultimately to be carried.*

May the line of appeal stop in different parts of the kingdom, or must it be carried on from all parts to a common centre? To a common centre; and this for two reasons: 1. To get the best public that is to be got; 2. For the sake of uniformity. Both these reasons concur in fixing upon the metropolis for that common centre. The metropolis has the best public: the metropolis is but *one*.

Simplicity on the part of the law; certainty, facility of being known, understood, obeyed, inspected, and improved, all concur in manifesting the importance of uniformity in the constructions put upon it. From diversity results uncertainty: and uncertain justice and no justice are the same. At Orleans a general law of property has been construed one way; at Chartres, another. What follows? That, as far as the diversity extends, nobody knows what is his own, what another's, at Orleans, at Chartres, or anywhere else. One man claims the ritual of Orleans; another, that of Chartres: and the judge, without committing himself in the smallest degree, may give the thing to which of them he pleases.

I hear objections:—

1. "The necessity of uniformity in legislation does not," it may be said, "require a common centre in judicature. It is by a detachment of the legislature, by your committee of review, that you propose everything for the insurance of uniformity should be done. But this being one body, and that seated in

* The antique distinctions taking away appeals in cases of *infangthef* and *red-hand* were as ill-grounded as the phraseology is uncouth. What becomes of infangthef and outfangthef, when three or four pickpockets shift a handkerchief from hand to hand in the twinkling of an eye, and all are seized for it? What has *red-hand* to do, when prison, not the sword, is the instrument of death? And in the marks of guilt in general, who shall mark out the limit between fresh and stale? Yet these are among the clearest distinctions in point of difficulty.

Difficulty may subsist—

I. As to the question of law:—1. Under the written law, if the text of the law be ambiguous or obscure: if there be an incongruity between one part of that text and another. 2. In the unwritten law, if decisions clash: if there be a want of decisions in cases of near analogy to that in question—a deficiency of which the natural effect is to draw in a proportionable abundance of decisions of remote analogy.

II. As to the question of fact:—If the evidence of different persons is contradictory: if the testimony of a principal witness is inconsistent or obscure: if the cause furnishes different pieces of real or circumstantial evidence pointing to opposite conclusions.

† Tit. III. Art. 8.

‡ Clavière de la Foi Publique p. 161: 8 sous 10 den. a-day, gives 161 liv. 4 sous a-year.

‖ 250 liv. Tit. IV. Art. 9.

the metropolis, why might not the line of judicature end anywhere else?" That it might do so, without absolutely giving up the point of uniformity, is not to be denied. But I see considerable disadvantage in such an arrangement, and I see no adequate advantage. Seated in the metropolis, the courts of appeal will be under the eye of the committee of review, and under the eye of the same public by which that committee, and the assembly from which it emanates, are themselves inspected. Scatter the ultimate courts of appeal up and down the country, it would be a separate work to collect together in the metropolis the reports of their decisions, and a separate expense. In different places, this branch of duty might be discharged with different degrees of punctuality: from one place, reports might come in speedily; from another, tardily; from another, not at all. Send all appeals up to the metropolis at once; punctuality is placed under the guardianship of private interest: each appellant, in sending the record up to the court of appeal for judicature, sends it within reach of the committee of review, in readiness for whatever use they may think fit to make of it in the way of legislation.

In point of expense of conveyance, nothing is gained: nothing worth reckoning, though the records were to stop at the proposed courts of appeal in the provinces; for, as already observed, when once a packet is in the post, whether it stops at a country-town, or comes on to Paris, makes in this respect but little difference: still less, when they must all come to Paris at the long run, or the object of uniformity be given up.

2. "The demand for uniformity," it may farther be objected to me, "extends, according to your own showing [§ 2,] to no other decisions than those which turn upon the point of law." True: but since all decisions of this nature must come up to the metropolis, why not the others with them? The separation would produce diversity and complication to no use. The separation, too, supposes the distinction between the point of law and the point of fact to be understood by everybody: unfortunately it is the very thing that is understood by nobody. It being too much for judges, it being too much for legislators, juries are to be set up to make it: and by their superior skill and experience all difficulties are to be overcome.

3. "In point of publicity at least," it may be said, "nothing will thus be gained. The public at the metropolis is, it is true, a better one than could be had in any one country-town, or in several country-towns. But is it better than is to be had in all of them put together? The breaking down the superintending part of the public into fractions too small to be respectable, is an inconvenience you yourself point out as resulting from the multiplication of tribunals of exception." [Ch. III.] I answer — This will depend in some measure upon the number of the towns in which the ultimate courts of appeal in question would be placed. Shall we say sixteen? That would be a great many. But are there any sixteen towns in the kingdom, of which the population put together would equal that of Paris? I doubt it. But laying aside this intricate consideration, I resort to a much shorter one. Placed in the metropolis, the courts of ultimate appeal, be the number of them what it may, will naturally be collected under one roof, or at least under a very few Being courts of appeal, and not of immediate jurisdiction, there is no reason why they should not. But it is in proportion to their importance that causes stand in need of the public inspection, and it is in the same proportion that they are likely to get it. The best public will naturally go to the most interesting cause; and the most interesting and the most important are the same. But on the least important cause, no judge can make sure for two minutes together of not having a public sufficiently respectable to show him the rod of censure hanging over his head.*

§ 6. *No Intermediate Appeals.*

Appeals, then, there ought to be in every case, as many in one as in another, and in every case to the metropolis. So far we are arrived. Ought there to be any, and what number, of intermediate ones allowed elsewhere?

Unquestionably not three: not four degrees of jurisdiction. This is surely more than any one could propose designedly: whatever the committee may have done undesignedly, and under other names.

1. Take two, and what would be the consequence? Sometimes to settle men's opinions: sometimes to unsettle them. If the two courts of appeal concur in condemning the decision of the immediate court, it is well: so, if the ultimate court agrees with the immediate court, condemning the intermediate court of appeal: in both cases there is the weight of two opinions against one: and let that of the ultimate be supposed of more weight than that of either of its subordinates. But let the intermediate court approve of the decision of the immediate one, and the ultimate condemn both. On which side shall public opinion fix itself now? On the one side, number; on the other, weight: but who

* A reporter by authority might be appointed at each court, to give summary accounts of its proceedings day by day. The profit of the sale could hardly fail of covering the expense: and the activity of voluntary news-writers would furnish a natural check upon the good faith and accuracy of this official scribe.

shall adjust the pre-eminence between weight and number?

2. Is *rectitude of decision* the object?—Having got the best chance for it at the metropolis that is to be had anywhere, what more could you have anywhere else? In the metropolis you get the best public, the best judges, the best advocates: the best securities of all kinds, as well for probity as for intelligence. What use of any intermediate degree? It would be only botching a better judicature with a worse.

3. Can it be the *saving of time?* Not that, surely. What you save upon the single appeals will be more than spent upon the double ones.

4. Can it be the *saving of expense?* Delay and expense are linked together: the expense is doubled at least, as certainly as the time; and with it, the advantage of the rich over the poor, and thence the danger of a denial of justice. Minute indeed it would be at the worst, after the reductions above pointed out, in comparison of the measure hitherto accustomed: but still that little would be doubled.

5. Nor should the evil of complication tell for nothing: delay would be doubled; expense to suitors would be doubled; expense of the establishment would be doubled; complication would be more than doubled. Three degrees of jurisdiction give, as has been just seen, variety of results: you must ring the changes upon them, and provide laws for all the changes. Complication is no objection to necessary laws: for, if it were, it would make an end to all laws: but it is a fatal one to all unnecessary ones.

Intermediate courts, if anywhere, would be in the provinces: for it is distance that affords the most plausible plea for the interpolation. Plausible it may well be termed; for, were it not for the maxim, *Nothing above but what has been exhibited below*, it would be irresistible. Fresh evidence supposes fresh attendance: and how few are the purses that could bear the expense of travelling from the circumference to the centre of the French empire? But for this, wealth would enjoy undisturbed the monopoly of justice. But for this, you must in the provinces have *many* courts of appeal, that each may be *near;* and in the metropolis you must absolutely have none; for if personal attendance of parties and witnesses is necessary in any one rank of courts of appeal, by the same reason is it in every rank, if there were half a dozen of them. But the nearer you have them to men's homes, the more you increase the danger of local partialities: unless you make them so numerous that the remedy afforded by the principle of intercommunity of jurisdiction may be resorted to without inconvenience. The metropolis is not only in no neighbourhood with the provinces, but in no neighbourhood with itself: in such a throng, contiguity creates no source of partiality, no bond of connexion, scarce a channel of intercourse.

An obvious middle course is, the giving these interpolated intermediate courts to the remote provinces, and not to the near ones: but this, to the mischiefs which have been just shown, would add those of inequality and further complication. If the additional degree is an advantage, why deprive a man of it, only for living near the capital? if a burthen, why saddle him with it only for living at a distance?

"The distant provinces," it may be said, "will lie under a disadvantage: justice with them cannot, after appeal, be quite so speedy as in the nearer ones." Lament the inconvenience as much as you please: but if you cure it, it will be by a worse. This is a price which justice pays for security against foreign injury: this is a price which distant parts must pay for belonging to a large whole. One comfort is, that the limits of the inconvenience are not to seek: about three weeks delay in the remotest corner: advance from thence, it diminishes, till at last it vanishes. It confines itself to penal cases: for in civil ones, the maxim of *execution notwithstanding appeal*, dispels it. And even in penal cases, what do you lose by it? A slight and questionable advantage, suggested by a theory which could hardly have meant to apply to such a case: the advantage of bringing punishment into contact with delinquency. Where witnesses are numerous or distant, it is unattainable: where attainable, it is dangerous. From precipitation may arise injustice, and that irreparable: from the delay in question, the worst that can happen is I know not what speculative difference in point of impression between a punishment inflicted this day or this day three weeks. Delay interposed between delinquency and the exhibition of the evidence, as under the English circuits, is a real grievance: for the marks of truth may vanish in the meantime, and at any rate the colours of it will fade; but the delay here does not come in till after the complete exhibition of the evidence. Seldom indeed will defendants complain of it: for in at least ninety-nine cases out of a hundred, it will have their *mala fides* for its sole cause.*

* A malefactor whose guilt is indubitable, and who has made no defence, will appeal to the metropolis for the sake of staving off for three weeks the evil day of punishment: this, in that case, is the utmost possible extent of the abuse: but this being inevitable, must be looked for. A defendant, if unjustly condemned by the immediate court, has so much the longer to wait for his release from jeopardy: an appeal from acquittal, if admitted into the code, may keep an innocent defendant in jeopardy so much the longer. These are two possible cases: I mention them, resolving to omit nothing: but nothing less than such a

If the opinion of the committee, as given in Tit. XI. of their plan, were to decide, the question would be at an end. Not only one appeal is sufficient, but none at all is necessary. Appeal is unnecessary in the most important class of causes, and these, if not more difficult than others, at least not less so: can it be more necessary in cases of less difficulty and importance? Appeal is unnecessary in the causes which they attribute to their high national court. True it is, that this is the finest court that ever was made: a court with five judges in it under the name of judges, and fourscore and three other judges in it under the name of jurymen. But if the reasons I have given under the head of numbers are worth anything, the court is just so much the worse, and so much the less to be depended upon, for all this finery. Instead of being eighty-eight times as good as a court with a single judge in it, it is eighty-eight times as bad: I mean, on the score of numbers only: besides its particular vices, with which we have nothing to do here. True it is, on the other hand, that, in causes comparatively of no moment, they give five or six degrees of appeal, nominally or virtually, in short, in the common run of causes. But why do they so? It remains for them to tell us. *

§ 7. *Of Judges of Appeal.*

What sort of persons should judges of appeal be? Persons who enjoy a still higher measure of the people's confidence than their brethren. Of this superiority in point of confidence, there are two very simple proofs: length of service, a presumptive one: frequency of election, a positive one.

A judge of appeal ought, therefore, to be taken, not from among new men, but from judges of the immediate court: under that limitation, he ought to derive his title from the immediate choice of the people. What more conclusive titles to superiority, what other proofs of superiority, can be derived from any other source? He has been selected from among the select: he has twice received the most unequivocal declarations of the confidence of the people, and of the advantage he possesses in that respect over all concurrents.

On a first election, the proof of superior confidence cannot, it is evident, rest precisely upon this ground. Judges of all ranks being to be chosen together, you can neither have experience, nor repeated approbation testified upon experience. You must put up with a simple preference expressed by a superiority upon the poll.

§ 8. *Appellate Judicature ought not to be united to Immediate.*

1. If the same court acts in both characters, one of two absurdities must ensue:—Either there is a reciprocity in this respect between two courts, or there is not. If there is, what do you gain by your appeal? The two courts stand upon the same footing in point of confidence. The first opinion is not wider from the second, than the second is from the first. "The one," say you, "the one, as coming after the other, is maturer than the other." So would it equally in case of a rehearing before the same judge, which would take less trouble. †

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resolution could introduce suppositions which under the harshest systems are so rarely verified.

* When a cause is said to be begun in a district-court, to say nothing of the canton-court below, the following is a map of the journey it has to take:—

1. Into the peace-office of the district; or into a canton-court under the name of a peace-office. Tit. IX. 1, 4.
2. Into the district-court. Ibid.
3. Back again into the peace-office of the district. Ibid. 5.
4. Into the department-court. Ibid.
5. Back again a third time into the peace-office of the district. Ibid. Quære.
6. Into the superior court. Ibid.
7. Into the supreme court of revision. Tit. X. 9.

A defendant, whose object is delay, may meet and fight the plaintiff through all these different stages, and that in any cause: for what should hinder him? and these six or seven degrees for anything above 250 livres value.

Gentlemen, it should seem, do not care how many degrees of jurisdiction there are, so as you do not call them by that name. M. Duport, whose plan has just reached me, and who declares war against appeals (p. 56,) is fond of quashing and revision (p. 59,) and is in raptures with the committee's *juges de paix*, and their "tribunaux de conciliation," p. 60. He gives a judgment which he calls "definitive" by grand judges, "after three judgments by judges of assize," p. 78. He sends his judges a circuiting, he clogs them with juries, and his only fear for his plan is grounded on its *extrême simplicité* (p. 65.)

Having dealt thus freely with others, it is time I should do justice upon myself. I take once more a leaf out of the book of the self-condemning pope. *Judico me cremari.* I sentence to the flames my department-court of appeal, my district-court of appeal, and in consequence Titles VII. and VIII. of my draught, with the greatest part of Tit. VI. Obsequiousness drew me into the snares of complication: reflection has restored me to simplicity. I beheld the nation entranced, as I thought, with visions of hierarchies, long as Jacob's ladder. Fresh packets are come in: and it seems as if prejudices of all kinds had lost their power in France.

† The incongruity of a reciprocation of superiority between two courts seems to have made the same impression upon them as upon me. To get rid of it, they have hit upon an expedient which, I must own, would not have occurred to me. They have invented a new species of mathematics. If B, say they, is greater than A, to make A greater than B would be absurd. Take C then, and make C as much greater than B, as B is than A; then may A be greater in its turn than C, without absurdity. From a department-court, acting in its capacity of a district court, appeal is

If there is no such reciprocity, what is the consequence? Useless profusion, or denial of justice. If one out of a set of immediate courts has time to spare for the business of a court of appeal, all the rest have time to spare for idleness: you pay them for their whole time, and you get but half of it. If it has no time to spare for this additional business, one or both businesses must be left undone.*

"Oh, but," say you, "out of all the immediate courts, we will take that, for our court of appeal, which has the least business upon its hands." If so, so much the worse. The Court which has the least business upon its hands, is the court of the least-peopled and of the worst-peopled territory; of the territory which has the smallest capital town: it is the court, of all others, which gives you the worst public, and the most peregrination. Such, then, is the dilemma: a court of the most business is least able to accept of the additional charge: a court of less business is less fit for it.

All this supposes intermediate courts of appeal and split jurisdictions, as upon the committee's plan. Upon my plan of universal competence and no intermediate courts, a junction of this sort, without reciprocation, would be impossible. To give the same man immediate jurisdiction in every thing, and appellate jurisdiction in everything, would be to take away *appeals*, and leave nothing but *rehearings*.

2. Keep the two stations separate, you gain a collateral advantage: the superior becomes a fund of reward for merit manifested below. The nation has thus, upon my plan, a treble hold upon its inferior line of judges. By the punishment of forfeiture, it secures itself against criminal misbehaviour: by the faculty of amotion, against unfitness short of criminal: by the power of promotion, it holds out encouragement for extraordinary merit. It offers to declining years an honourable retreat from a course of more active service. Courts of immediate jurisdiction must be often ambulatory. Where evidence is immoveable, either the judge must go to the evidence, or justice lose the benefit of it. Such is the case where bed-ridden witnesses are to be examined; houses, lands, or other immoveable objects, to be viewed.†

§ 9. *Number of Appellate Courts, in proportion to that of Immediate.*

Upon the plan of intermediate provincial courts, this topic of inquiry, however intricate, would have been a necessary one. Keep to metropolitan courts, and the difficulty is at an end. Set up, at a venture, a few to begin with. If a demand arises for more, add them one by one, as they are wanted. Calculation, with regard to proportional numbers, is a matter rather of curiosity than use.

The sketch given in § 3, of the expedients for reducing the evils of litigation, may be worth attention in this view. The quantity of time requisite for dispatching the business liable to come before a court, will depend partly upon the quantity of time demanded by each cause, partly upon the number of causes. In the former way, the reduction effected by the plan of summary justice may be expected to be very great. Of *malâ fide* causes, nineteen perhaps out of twenty would either be strangled as soon as born, or destroyed in embryo by despair. The latter would be the certain fate of all *malâ fide* appeals in civil causes. The expedients levelled against *malâ fide* causes and appeals would act with no inconsiderable effect against rash ones. In penal ones, especially in the higher classes, the reduction would be inconsiderable. On the other hand, *bonâ fide* causes, and those exempt from *rashness*, would multiply in a proportion perhaps equally large.

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to go, not to another district-court in the same department-court, but to the department-court of another department, within the jurisdiction of the same superior court; and to avoid the incongruity of a direct reciprocation of superiority between two such courts, an indirect and still more incongruous chain of reciprocation is established among the whole number of such courts, in manner above explained. [See Tit. V. 9.] In all this there is great ingenuity, but to what end? Perhaps that of preventing the ill humour liable to be bred by a course of reciprocal correction. What a pity, that instead of giving their own reasons, they should have left the task to adversaries!

* These considerations seem not to have presented themselves to the committee. To make a department-court, they take, we see, one of the district-courts, and, in addition to the business of an immediate court, which it possesses in that character, they load it with as much of the business of an appellate court, as all the other district-courts in the same department can supply. The same courts, too, that are thus doubly loaded with business, are doubly loaded with judges. Five serve for an ordinary district-court; but it is to have ten, when raised to the dignity of a department-court. If five judges will find themselves in one another's way, as most certainly they will, ten judges will find themselves as much more so. Eighty-three departments, and five hundred and thirty-eight districts, give upon an average somewhat more than six districts to a department. The situation of the committee's judges calls for pity. In every department I see five-and-twenty of them spoilt with idleness, ten expiring with fatigue. Sad also is the lot of every suitor, upon whom the honour of living under the dominion of a department-court does not pass as an equivalent for justice.

† Accordingly, under the French system of procedure, both these contingencies are provided for: under the English, the latter only, and that imperfectly. But what matters it? All the harm is, a failure of justice, the never-failing resource under all difficulties.

All whom poverty and the iniquity of expensive procedure had excluded from justice, would now be flocking in for their share.

The case is the same with *bonâ fide* appeals: though the means of explanation and instruction, thrown open by the removal of the wall built up by lawyers between the suitors and the judge, might here too be expected to effect a considerable reduction. The introduction of so many new laws, the ambiguous, half-dead, half-living state of so many of the old, and the clashing of old with new, must under any system of procedure be a great and sudden cause of increase, though happily a temporary one. But the searing of the heads of the hydra of unwritten law will operate as a gradual cause of reduction, in proportion as Hercules advances in his career. *Bonâ fide* disputes, relative to matters of fact, remain the indestructible patrimony of mercenary lawyers, and the incurable, though very tolerable distemper, to which the utmost improvement of the laws can afford no remedy.

§ 10. *Historical Sketch.*

If at the top of a long ladder of appeal you happen to meet with justice, thank fortune, rather than wisdom or benevolence, for the prize. Anarchy and despotism joined in setting up the ladder, little heeding where it led. For every link in the feudal chain, there must be a degree of jurisdiction; at least a tendency, if possible, to make one. Tribunals within tribunals grew necessarily out of sovereignties within sovereignties. Subjection was the object and the final cause: peace and justice were collateral and unintended acquisitions: if the people were ever to be kept quiet, it was for the reason honestly given in the language of the old English law—that the monarch might not suffer disturbance by their noise.* Look to Germany, where feudality is in all its beauty, you will find exemption from appeal the privilege, not of the people, but of the chieftain: usurped by powerful, usurped from weaker ones.

In ancient Greece and ancient Rome, the feudal cause being wanting, the feudal effect did not exist. Appeal you find in plenty: but seldom, if ever, more stages of it than one. So it strikes me upon recollection: but to what purpose the research?

Under the English chaos, to speak of appeals with tolerable accuracy, would require a volume. Simple objects admit of simple descriptions: take complication for your theme, truth must be sacrificed to simplicity, or simplicity to truth. In some instances, no appeal at all: in others, three or four degrees of jurisdiction where there is as little need of it. In many instances, whether there shall be more or fewer appeals, depends not upon the nature of the cause, but upon the mode of its commencement. Many appeals which have not the name: † as indeed, in general, appeals there have not that name.

In general, the ground of appeal pretends not so much as to have anything to do with the merits. Decisions grounded on the merits, and decisions which, though equally legal, have nothing to do with the merits, is a distinction familiar as any in the whole circle of the law: and a counsel says, with equal simplicity to the judge, My argument does or does not turn upon the merits. The appeals that are frequently taken away, are the appeals upon the merits: appeals from a bad public to a better one: from less learned to more learned magistrates. ‡ The appeals that are carefully preserved, are those from one side of Westminster-hall to another: from four judges to four judges, or to nine or ten judges of the same class and standing: from the pure judicatures of the judges, so called, to the worst constituted of all judicatures except the House of Commons, the House of Lords.‖

Along with appeals, so called or not so called, you have in various shapes the favourite resource of pretended tenderness and real oppression, a suit carried through in order to know whether a suit shall be begun; § a long series of proof, on which no decision can follow, except a decision that proof shall or shall not be exhibited over again: a cause tried in the worst way possible, ¶ in order to know whether it shall or shall not be tried in a better: inquiries carried on in the dark,** in order to know whether prosecution shall be begun against a man for a crime, six months after he has been in jail for it. †† One might fill pages in this way: but to what purpose drudge on further in the mine of precedent without principle?

* "*Ne amplius clamorem audiamus.*" *Vide Registrum Brevium, passim.*

† Writs of Error—Motions to quash convictions—Motions for new trial.

‡ Appeals from single justices of the peace to the quarter-sessions: appeals from the quarter-sessions to the King's Bench. The artificial evil of expense affords the plea of necessity to this injustice.

‖ From the Common Pleas, or the inferior judicatures, through the King's Bench, to the House of Lords: from the King's Bench, or Exchequer, through the Exchequer-chamber, to the House of Lords.

§ Motion, supported and opposed by affidavits, for leave to file an information.

¶ By written affidavits on both sides.

** Preferring of a bill of indictment to the grand jury.

†† By a warrant from a justice of peace.

CHAPTER V.

TIT. III. — OF JUDGES OF THE ORDINARY COURTS.*

§ 1. *Appointment—Continuance in Office—Power and Rank.*

ART. I. — A [judge[a]] (principal) shall be elected by the electors chosen by the *active* citizens of the territory, over which he is to be [judge,[a]] in the same manner as a member of the administrative body of that territory: parochial [judges[b]] excepted, of whom in Tit. VII. and metropolitan [judges.[b]] †

Art. II. — On the first election, to be eligible to this office, a man must be seven-and-twenty years of age, and must have exercised the functions of a man of law for three years, in a superior court, or for five years before an inferior tribunal.[c]

Under the denomination of men of law, are comprised, for this purpose—1. Judges of every description. 2. King's advocates and attornies, and their substitutes. 3. Advocates. 4. Attornies. [5. Secretaries of Courts? *Greffiers?*] [6. Notaries?]

Art. III. — No vacancy in any [judicial office[d]] but the lowest shall be filled, but out of the same rank of [judges[b]] or that next below: but [judges[b]] in those ranks all over the kingdom are alike eligible.

Art. IV. — No vacancy in the lowest rank of [judges[b]] principal shall be filled but by some one who has served in the station of [judge[a]] depute permanent, and that for at least [three] years, on elections posterior to the year [1793.]

Art. V. — The [judge[a]] principal of every court (except the parish [or canton] court, and the metropolitan), shall hold his office for life, unless divested of it in one or other of the following ways:—

1. Resignation.
2. Forfeiture, judicially pronounced.
3. Amotion, pronounced by the suffrages of a majority of the whole number of the electors, entitled to vote at the last preceding election, general or particular, holden for the choice of a magistrate, or of a member of the administrative body of his territory.
4. Amotion, pronounced by a majority of the whole number of members of the administrative body next in rank above that of the territory of which he is [judge.[a]]

Art. VI. — By amotion, without forfeiture, a [judge[a]] loses his rank as such, but not his salary, nor the capacity of being re-chosen, even immediately.

Art. VII. —[e] Every judge, for the enforcement of his decrees judicially given, has, in case of necessity, the command over all persons, without distinction, within the bounds of his territory, the king only, and judges of equal or superior rank, excepted.

Art. VIII. — When a [judge,[a]] in the exercise of his function, goes out of his own proper territory into another, he takes his [rank and power[f]] with him, subject only to the [rank and power[f]] of the co-ordinate and superior [judges[b]] of that territory.

Art. IX. —[e] A judge principal shall have precedency of all persons over whom he has power, as according to Art. XI.; a judge of appeal taking place of a judge of immediate jurisdiction for the same territory, and judges of the same court, according to the priority of their appointment.

Art. X. —[g] *Judicial duty ought not to be neglected for any other.* Acceptance of a judicial office vacates every other, judicial or not judicial: and acceptance of any office not judicial, vacates every judicial one. Much less shall a judge exercise any other profession, such as that of notary, advocate, or attorney. This extends to judge-deputes permanent, but not to judges natural, of whom in Tit. V.

Art. XI.—[*A judge ought to stand clear of offence, and of suspicion of partiality.*[h]] No [judge[a]] shall give his vote at any election; nor use any means, direct or indirect, to influence the votes of others.

§ 2. *Pay.*

Art. I. —The expense of the salary of an [instituted judge[a]] of the parish court shall be defrayed by the parish:

[Of a canton-court, by the district:]

Of a district-court, by the district:

Of a metropolitan court, by the nation.

Art. II. — On the [day] preceding the day of election, an auction shall be held be-

* With the variations indicated by the ensuing notes, the contents of this will serve for Tit. IV. *Of Pursuer-Generals*, and Tit. V. *Of Defender-Generals.*

a { PURS. GEN. Pursuer-General.
DEF. GEN. Defender-General.

b { PURS. G. Pursuer-Generals.
DEF. G. Defender Generals.

† In both instances upon the same principles, with only a slight modification indicated by local differences.

c This article is copied from Tit. IV. Art. 5, of the committee's draught, relative to the district-courts. The specification I have subjoined seems requisite, to prevent uncertainty.

d { PURS. G. Office of Pursuer-General.
DEF. G. Office of Defender-General.

e PURS. G. and DEF. G. Omit this article.

f Purs. G. and DEF. Authority.

g PURS. GEN. and DEF. GEN. To this Article substitute—Acceptance of the office of Pursuer [or Defender] General at any Court, vacates every other: and acceptance of any other office, vacates that of Pursuer [or Defender] General. Nor shall a Pursuer [or Defender] General exercise the profession of notary, advocate, or attorney. This extends to Pursuer [or Defender] Generals and Deputes permanent.

h PURS. G. and DEF. G. Omit this clause.

fore the directory of the administrative body of the territory charged with the expense of the salary, under the name of *the patriotic auction:* at which the candidates shall be at liberty to attend, in person or by proxy, in order to declare, each of them, what he is willing to give, if anything, to the common fund of the territory, in the event of his being elected to the office. And thereupon the office shall be put up by the president, each bidder being at liberty to advance as often as he thinks proper, in the manner of a common auction.

Art. III. — As soon as it appears that no candidate will make any farther advance, each shall give in an undertaking in writing, in which shall be specified what he binds himself to give, in the event of his being elected.

Art. IV. — At the same time each candidate shall give in an inventory of his estate, as well in possession as in expectancy, together with all charges thereupon, with an estimate of the clear value thereof in ready money: the whole being signed by the candidate himself, and verified by his oath.

Art. V. — At the same time each candidate shall give in a paper stating his pretensions, of what nature soever, on which he grounds his hopes of being chosen; such as his age, the time during which he has acted in the capacity of a man of law, in what branch of the profession, before what courts, and the like; and such paper shall also be signed by the candidate himself, and verified by his oath.

Art. VI. — The above inventory may either be open, or sealed: if sealed, the declaration of its verity, concluding with the signature, shall be on the outside: and it shall be reserved unopened till the event of the election is declared: at which period, if he whose act it is should prove the successful candidate, it shall thereupon be broken open; if not, it shall be returned to him unopened.

Art. VII. — The above-mentioned undertakings and declarations shall forthwith be printed together on the same paper, and a copy given to every elector [ ] days before the election.

Art. VIII. — If, the election having fallen upon one of the bidders, he should fail in complying in any particular with the terms of his engagement, his right to the office shall thereupon cease: and upon a vacancy declared by the competent court, at the instance of the procurator-syndic of the administrative body, a new election shall be decreed: but time may be allowed him for performing his engagement, or an equivalent accepted by the court on his application, the procurator-syndic being heard on the other side.

Art. IX. — The penalty, in case of falsehood in a declaration given in as above, shall be, if the falsehood were wilful, forfeiture of the office, together with the purchase-money, if any were paid: if the falsehood happened through inadvertence coupled with temerity or negligence, a discretionary fine.

Art. X.—From the salary of every [judge[a]] shall be deducted [25] per cent. upon the interest of the capital representing his private fortune: yet so as that the remainder shall not be less than [one fourth] of the whole: unless in as far as any farther deduction may have been comprised in the undertaking he has delivered in.

Art. XI.—In the case where, his salary not having undergone the utmost deduction of which it is thus susceptible, any accession happens to his fortune by succession, donation, or bequest, to the value of [12,000] livres or upwards, he shall, within [half a year] after effects to that amount have been received, give in a supplemental declaration of the particulars of such accession: and, upon an account settled with the officer who stands charged with the payment of such salary, a proportionable deduction shall take place, from the day when such supplemental declaration was given in.

Art. XII. — The contribution offered at the auction may be either in ready money, or in any other shape: and in particular, it may be in the shape of a release of the whole, or any part of the appointed salary; and in this case, the deduction prescribed by Art. X. shall be understood to be included: but no offer shall be deemed valid, which would reduce the income of the candidate below the amount of the appointed salary.

Art. XIII.—On the day when the successful candidate is sworn in, and previously to his being sworn in, any member of the corporate assembly, before which he is sworn in, shall be at liberty to put to him all such questions as may tend to ascertain the truth and sufficiency of the several declarations he has given in: and whoever exercises the functions of procurator-syndic, is specially charged with this duty, and responsible for the neglect of it.

Art. XIV. — That time and opportunity for scrutinizing the accuracy of the inventory above mentioned may not be wanting, the [judge elect[a]] shall not be sworn in till [ ] days after it has been broken open, nor till [ ] days after it has been published in [*the newspaper most current in the place.*]

Art. XV. — In case of amotion without forfeiture, the salary paid shall be the appointed salary, without deduction: and any contribution that has been given in consequence of the patriotic auction shall be refunded, but without interest.

Art. XVI.—In case of resignation, the contribution shall in like manner be refunded, but no salary continued.

[a] { PURS. G. Pursuer-General.
DEF. G. Defender-General.

§ 3. *Attendance.*

When Injustice sleeps, Justice may do the same.

Art. I.—The [judgment-seat[i]] ought never to be empty, during any part of the *juridical day*, throughout the year: in an immediate court, never: in a court of appeal, never where there is any cause on the paper, ripe for hearing.

Art. II. — The juridical day shall be of [twelve] hours: viz. from [eight] to [eight,] allowing only [one] hour within that time, viz. between [two] and [three,] for refreshment. This extends not to the judges termed natural.

Art. III. — A [judge immediate,[k]] when absent from the fixed judgment-seat upon out-duty (as upon a view or the examination of a sick person,) ought to take care that it be filled, if possible, by some [judge[a]] depute permanent or occasional; on pain of being responsible for the failure.

Art. IV.—A [judge's[l]] salary shall be reckoned by the day, and paid him every [week] by [*the paymaster:*] it shall be paid him nowhere but upon the [judgment] seat; or, in case of sickness, in his own apartment: a day's pay being deducted for every day of absence, otherwise than upon duty; except vacation-days which he is allowed to take, [sixty] in the course of the year, at his choice: provided that the [judgment] seat be not at any time left vacant.

Art. V. — The day's pay thus to be received shall be a day's pay of the *appointed* salary: the difference, if any, between that and the *clear* salary remaining after the contribution furnished, according to § 2, shall be made up by quarterly advances, which the [judge[a]] shall make on [*the usual quarter-days*] to [*the paymaster;*] nor shall he be reimbursed any deficiencies occasioned by unallowed days of absence.

Art. VI.—Declaration to be taken by every [judge[a]] every time he receives his salary:—

I, A. J., solemnly declare, that since the last time of my receiving salary, I have not at any time, during juridical hours, been absent from the duty of my office, except during the following days, viz. [;] nor absent from the [judgment-seat[i]] except the following days, when I was out upon duty, at the places, in the causes, and for the purposes following, viz. [ ]

ART. VII. — A copy of every such declaration, signed by the [judge[a]] shall, on the same day on which it was made, be hung up in a conspicuous manner near the judgment-seat, there to remain till the next quarter-day.

Art. VIII.—A [judge[a]] is to be understood to have been absent from duty on any day, if, in the course of that day, he has not sitten at least [one hour]; and if, during the rest of the day, he has not been within [an hour's] call of the judgment-seat, except when out upon distant duty: word being left with [ ] where he was to be found.

Art. IX. —[Judges[b]] of immediate courts are also bound to go upon duty, in cases of necessity, at all hours, in manner hereinafter specified.

§ 4. *Oath of Office.*

Art. I. — The following oath shall be taken by every [judge[a]] upon his entrance into office. While pronouncing it, he shall stand up before the judgment-seat, in open court, with his left hand on his bosom, and his right lifted up to heaven:—

I, A. J. being raised by the choice of my fellow-citizens to the office of [ ], do solemnly promise and swear—

[Art. II.[m]—1. That so long as I continue in possession of my said office, I will, to the best of my ability, administer justice to all men alike, to high and to low, to rich and to poor: not suffering myself to be biased by interest, or by indolence, by hope or by fear, by favour or by aversion towards any individual, or class of men, or party in the state.]

Art. III. — 2. That I will not endeavour to keep secret, but on the contrary study by all suitable means to render public, the proceedings belonging to my office, in all cases in which the law ordains them to be public.

Art. IV. — 3. That I will keep secret, to the utmost of my power, the proceedings belonging to my office, in as far as the law ordains them to be secret.

Art. V. — 4. That I will not on any account, out of the regular course of justice, give ear to, but indignantly reprove, any application that may be made to me concerning any cause, in contemplation of its depending or coming to depend before me, much less give any opinion or advice relative thereto: and that, should any such application be made to me in writing, I will forthwith produce and read the same in open court, although it should be contained in a private and confidential letter.

Art. VI. — 5. That I will at no time accept any gift or favour that shall have been

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i { PURS. G. Seat of the Pursuer-General. / DEF. G. Seat of the Defender-General. }

k { PURS. G. Pursuer-General of an immediate court. / DEF. G. Defender-General of an immediate court. }

a { PURS. G. Pursuer-General. / DEF. G. Defender-General. }

l { PURS. G. Pursuer-General's. / DEF. G. Defender-General's. }

b { PURS. G. Pursuer-Generals. / DEF. G. Defender-Generals. }

m PURS. G. and DEF. G. *To this clause substitute the three clauses inserted under* Tit. IV. Art. 6 & 7.

offered to me, in the view either of influencing or recompensing my conduct on any particular occasion in the discharge of the functions of my office: and that, in case of my suspecting any favour to have been done or offered me with any such view, I will forthwith declare and make public my suspicion: nor will I knowingly and wittingly suffer any such offer or recompense to be made, on any such account, to any person dependent upon or connected with me; but that, on suspicion of any such offer or recompense, I will forthwith make public such my suspicion, together with the grounds thereof, and the names of all parties concerned.

Art. VII.—6. That I will not, on the occasion of any pecuniary or other bargain, directly or indirectly avail myself, or endeavour to avail myself, of the influence or authority of my station, to obtain any advantage to myself or any other.

Art. VIII.—7. That I will not take any part whatsoever in any election: nor use any means, direct or indirect, to influence the vote of any other: excepting only the public statement of my pretensions according to law, on any election in which I shall myself be candidate.

Art. IX.—8. That I will not willingly absent myself from duty, except to the extent of the time allowed me by the law, or in case of unavoidable necessity, resulting from sickness or otherwise: nor then, without making the best provision in my power for keeping my place supplied.

Art. X.—9. That I will, as far as depends upon me, give to every cause that comes into my hands the utmost dispatch that shall appear to me consistent with the purposes of justice: nor will I[m] put off any cause, or give to any cause the priority over another, but for special reason publicly declared.

Art. XI.—10. That I will at no time, through impatience or otherwise, knowingly cause or permit justice to suffer by undue precipitation: and, in particular, that I will not bestow less attention upon the cause of the poor than of the rich: considering that where small rights are seen to be contemned, great ones will not be deemed secure; and that importance depends not upon nominal value, but upon the proportion of the matter in dispute to the circumstances, and its relation to the feelings, of the parties.

Art. XII.—11. That I will not, through favour to those who profit by the expense of the administration of justice, connive at, much less promote, any unnecessary expense: but on the contrary study, as much as in me lies, to confine such expense within the narrowest bounds compatible with the purposes of justice.

[m] PURS. G. and DEF. G. *Insert*—seek to.

Art. XIII.—12. That I will not, through impatience, or favour to the professional advocate, show discountenance to him who pleads his own cause, or to him who pleads gratuitously the cause of his friend, but rather show indulgence, and lend assistance to their weakness.

Art. XIV.—13. That I will, in all things touching the execution of my office, pay obedience to the law: and that[n] I will do my utmost to carry the same into execution, according to what shall appear to me to be the intent of the legislature for the time being: not presuming to set my own private will above the will of the legislature, even in such cases, if any, where the provisions of the law may appear to me inexpedient; saving only[o] the exercise of such discretionary suspensive power, if any, with which the legislature may have thought proper to entrust [me.[p]]

Art. XV.—14. That I will not either make or revoke any appointment of a depute, permanent or occasional, with a view to favour or prejudice any suitor otherwise than according to justice, but for the common convenience of suitors, and only to the extent of the number which shall appear to me requisite to that end.

All these engagements I hold myself solemnly pledged to fulfil, by all the regard I owe either to the displeasure of Almighty God, or to the indignation and contempt of my fellow-citizens.

Art. XVI.—A copy of the above oath, printed in the largest type, and on one side only of the paper, with the signature of the [judge[a]] at length to every clause, and at the end the date of the day when signed, shall be kept hung up in a conspicuous situation near the [judgment[q]] seat, so long as he shall continue in office.

§ 5. *Deputes.*

Art. I.—The duty of the permanent [judge[a]] depute shall be to take the place of his principal, and with the same [powers,[f]] whensoever the principal shall happen to be absent from duty, or preoccupied therein.

Art. II.—The [power[f]] of the [judge[a]] depute permanent shall last as long as his principal continues in the same office, and until a vacancy in the office is filled up: unless the appointment be sooner revoked, which it may be at any time, or terminated in any

[n] PURS. G. and DEF. G. *Insert*—in as far as appertains to my office.

[o] PURS. G. and DEF. G. *Insert*—the reclaiming.

[p] PURS. G. and DEF. G. The Judge.

[a] { PURS. G. Pursuer-General. DEF. G. Defender-General.

[q] { PURS. G. Pursuer-General's. DEF. G. Defender-General's.

[f] PURS. G. and DEF. G. Authority.

of the ways in which the office of a judge principal may be vacated.

Art. III. — To the station of [judge[a]] depute permanent, no emolument of any kind shall be annexed; except a habit of office to be worn while on duty, and a mark of honour to be worn at all times during his continuance in the station: and in rank he shall take place next his principal.

Art. IV. — A [judge[a]] principal is civilly responsible for the acts of his deputes, permanent or occasional, having recourse to them for his indemnity: also criminally, in case of his concurring with, or barely conniving at, any behaviour known to him to be criminal on their part.

Art. V. — A [judge[a]] depute permanent shall pronounce and sign the same oath as a [judge[a]] principal, and in the same manner: excepting only the words [*permanent or*] in the 14th clause; and making the requisite change at the commencement relative to the style of office.

Art. VI. — A permanent [judge[a]] depute is bound to the same attendance as his principal: except that he is allowed half as many vacation days in the year again (taking them only when his principal is upon his duty), and that he is not liable to be called to night duty while his principal is in the way.

Art. VII. — Attached in like manner to the office of [judge[a]] principal, shall be in the power of appointing occasional [judges[b]] deputes for the purpose of performing duty in any particular cause, or relative to any particular point in any particular cause.

Art. VIII. — To the function of occasional [judge[a]] depute shall belong neither emolument nor permanent honour: but for distinction sake, he may wear, while on duty, a medallion, or other such mark of office.

Art. IX.—An occasional [judge[a]] depute shall, previously to the first time of his taking upon him that function, pronounce and sign, in the presence of the judge who appoints him [*an oath the same as the above, mutatis mutandis:*] and entry of his having done so shall forthwith be made in the register-book of the court.

Art. X. — A permanent [judge[a]] has in like manner, and under the same responsibility, power of appointing occasional [judges[b]] depute. But it is to be expected that he exercise it only in case of necessity, and for the reason that such appointment cannot be made by the [judge[a]] principal: and such appointment is at any time revocable by the [judge[a]] principal.

Art. XI. — Any person having exercised the function of judge-depute, may, by either of the bodies to whom the power of amotion is attributed by § 1, Art. V. be incapacitated from exercising within the limits of their respective authorities, the like functions in future: but such incapacitation may be revoked at any time, either by the same authority, or by any to which it is subordinate.

Art. XII. — As often as any act is done by or before a [judge[a]] depute, either permanent or occasional, mention shall be made as well upon the face of the act, if written, as upon the register-book, by or before whom; and if in the instance of a [judge[a]] depute occasional, by whom appointed.

Art. XIII. — Care ought to be taken to avoid, as much as conveniently may be, the shifting of the same cause to different [judges,[b]] unless when the points of which they respectively take cognizance, happen to be totally independent of each other: that [the judge who gives judgment[r]] may be as little as possible under the necessity of taking the grounds of his [opinion[s]] at second-hand, from another man.

§ 6. *Responsibility.*

Art. I. —The punishment of a [judge[a]] for misbehaviour in relation to his office, may be to all or any of the effects following:—

1. Injunction to be more circumspect in future.
2. Suspension from office.
3. Deprivation.
4. Incapacitation for any office, or for certain offices.
5. Fine.
6. Imprisonment.
7. Obligation to make satisfaction, in the way of pecuniary compensation, or otherwise, to the party injured.
8. When the effect of the misbehaviour has been to produce death, or any other corporal suffering, on the part of any one, in the way of punishment, or otherwise; such offence, if unaccompanied with *evil conscience** [*mauvaise foi*], shall be punished as if committed with the offender's own hands.

Art. II. — Judges, pursuer-generals, defender-generals, and their respective deputies, being privy to any misbehaviour, accompanied with evil conscience, on the part of each other, and not informing in due time, are punishable, as for connivance.

OBSERVATIONS.

§ 1. *Power of Amotion.*

Popular Election, Power of Amotion, Permanence of Situation in as far as is compa-

a { PURS. G. Pursuer-General.
  { DEF. G. Defender-General.

b { PURS. G. Pursuer-Generals.
  { DEF. G. Defender-Generals.

r PURS. G. and DEF. G. each Person.

s PURS. G. and DEF. G. Proceedings.

* A full definition of the expression, evil conscience, [*mauvaise foi*, *mala fides*] is absolutely necessary: but its place is in the Penal Code.

tible with that power, *Permanence of Salary notwithstanding amotion*, *Power of Deputation*, *Gradual Promotion*, and the *Patriotic Auction*—all these principles are so many parts of one whole: each of them is necessary or useful in that character: most of them have, besides, their separate good effects.

1. Without *power* of amotion, the people's *right* of election would be very inadequate to its end. By whom should offices be filled? By those who *have had* their confidence? No; but by those who *have* it. Join the power to the right, every instant a man continues in his place is a fresh proof of his fitness for it. Withhold the power, what would the right amount to? What the right of conferring Starosties amounted to in the hands of the king of Poland—the right of converting patronage into a nursery of ingratitude.

2. On this occasion, as on all others, popularity is to be considered as a solid and substantial good, unpopularity as a solid and substantial evil, independently of all considerations of good and ill desert. Two properties are indispensable on the part of a magistrate of this sort: that he be a good one, and that he be thought to be so. Without he be so, he will hardly, it is true, be thought so long: but so long as it is possible to be in either case without being in the other, better he should be thought to be good without being so, than be so without being thought so. A judge may be bad in a thousand respects: he may be corrupt or ignorant in the extreme, and yet, so long as his corruption or his ignorance do not transpire, no very material suffering may ensue from it: let him be generally thought so, whether he be or be not so, is a matter of small moment, otherwise than to his own conscience. An alarm, an opinion of insecurity, equally general, is the necessary consequence: and where there is no opinion of security, as well might there be no justice. Insecurity unapprehended is but a latent source of contingent misfortune to the few: insecurity perceived or supposed is a fund of actual and present uneasiness to the many.* Possessing the confidence of the people, then, is the first requisite in this line: deserving it, is but a secondary one. This in England is one of the great arguments for juries.

Fit or unfit to make the choice in the first instance, the propriety of the people's possessing the power of amotion will be equally indisputable. The danger is much greater of their failing in the right of choosing, than in the exercise of the power of correcting a bad choice. The right they will have to exercise before trial; the power, not till after trial: the right they may make an improper use of, without either cruelty or injustice; the power they cannot make an improper use of, without incurring both those imputations. Give them the power of amotion, the same source affords the mischief and the remedy: deny it them, the mischief of an unfortunate exercise of the right of choosing remains without remedy.

3. It concerns the reputation of the people, it concerns the general reputation of their fitness to bear a part in government, that a door should be left open, and that as easy a one as possible, to the correction of any mistakes they may chance at first to fall into, especially at the outset of their career. The people have their ill-wishers: the people, not less than individuals, have their enviers, who will not be unvigilant in discovering, nor unindustrious in magnifying and trumpeting any such mistakes. To pronounce them *miserable*, and to wish to see them make themselves so; to prophecy evil, and to wish to see the prophecy, however calamitous, verified; are propensities unhappily but too nearly allied in human nature. Their power, like that of individuals, must depend upon their reputation: and those who wish well to the one cannot be too careful of the other.

On this occasion, as on so many others, mark well the excellence of popular government, and the solution it affords to difficulties which under any other would be insuperable.

Lodged in any other hands, the power of amotion would be tyrannical and full of danger: the exercise of it would seldom deserve to command the confidence of the people, and still seldomer command it. Arbitrary power on the part of the censor would reduce to the condition of tools and slaves those who had the misfortune to be subject to the censure: what they did for justice' sake, would be attributed to fear: they might as well be corrupt, since they would be as unpopular as if they were.

When the question as to the disposal of power is only between individuals, or bodies of men, not dependent upon the people, a known policy is, not to lodge the right of nomination and the power of amotion in one and the same hands. Why? Because whatever were the causes of a man's making a bad choice, pride and self-love would join with them in preventing his making a better. Against the people, this policy has no ground to stand upon. Upon the people, especially upon a people voting by ballot, those passions have no hold. The persons called upon to correct the mistake, will not be numerically the same with those who made it. Society in error would relieve them under the uneasiness of shame: but the secresy which covers their acts would save them from so much as feeling it. The people are accordingly as noted for their readiness to recognise

* See Ch. IV.

their errors, as kings and other individuals in high office have been for their averseness.

If you will not give the people both, better deny them the right of election than the power of amotion. In what respect is the right of any value to them? Only as a means of lessening the danger of such a choice as would give them reason for wishing they had the power. Of what use to them to have the filling of the station with a man who possesses their confidence at the time, unless it be that they may pitch upon one who will continue so to do? But will he? That is the question: upon the inducements that are given him, depends the answer. To an individual, the right of nomination has quite another value: it is patronage; it is homage, flattery, services of all kinds, marketable, and unmarketable; it is whatever sort of sugar-plum the grown child finds most to his palate. To the people as a body, it has no such properties: they have no pride to gratify, no personal interest to pursue. Individuals among them may have; but in as far as they have, their interest stands opposed to that of the collective body: and the object of the laws on this head should be to smother such affections, not to pamper them.

Unpopularity out of the question, remedies will be requisite against the several species of unfitness, to the existence or imputation of which unpopularity may owe its birth, as to its most natural, as well as only rational, causes. All these would afford so many distinct grounds for the institution of this power, under any system, and in whatever hands the power were thought proper to be lodged: whether it were given to the people, or to persons out of their dependence; and whether in the view of securing their contentment and repose, or under any fantastic notion of fitness without reference to that end. In these several cases it must be considered in the double character of a cure, and of a preventative. Where it would seem most harsh as a cure, the power of applying it in that character is not the less necessary, since upon its capacity of being so applied depends its power of operating in the character of a preventative.

1. At the head of these species of unfitness stands *improbity*. I mean here that lesser or more questionable measure of improbity that would elude the grasp of punishment. Forfeiture is no remedy: for the distinction between forfeiture and the power of amotion is, that the former can only be applied judicially, that is, upon specific and conclusive evidence, and in the way of punishment. But a judge may have lost all character a thousand times over, and even be universally deemed guilty in a thousand specific instances, without its being possible to find evidence for punishment to fix upon.* Appeal is no sufficient remedy. Appeal administers a corrective in each particular instance: but, besides that the corrective applies not to judges of the highest rank, amotion may be necessary to effect a radical cure, when the demand for a repetition of the corrective becomes so frequent as to be troublesome.

Under the reign of unwritten law, there are two cases in which a judge, under the single condition of keeping his own secret, may decide which way he pleases, and give the most corrupt affections the fullest gratification: one is, where past decisions clash with each other; the other is, where they clash with reason. In the English law, would it be difficult to find examples? The difficulty would be rather to avoid meeting with them. If improbity has so seldom taken this advantage, thank the men, or thank publicity; but do not thank the unwritten law, and least of all the legislator, who sits with his hands before him in view of such a nuisance.

2. Next stands the *want of intelligence;* and especially where it has a *decline of faculties* for its cause. In a failure of justice, the degree only is material; the cause no otherwise than as it influences the degree. The power of amotion is still more necessary where blameless incapacity, than where improbity, is the cause. Improbity may bring a man under the law of forfeiture; and a sure effect of it is to excite indignation, and provoke men to call for the execution of that law. Blameless incapacity, especially where it is the result of age, has the contrary effect of exciting compassion, and disposing men to forget the interest of the public in their sympathy for the individual. Here, then, comes

* How can you punish a man merely for judging wrong, if with a colour of right, without knowing his motive? And if his motive be a partiality which betrays itself by no expression, how are you to discover it? A judge has exercised a legal discretion in a particular way, through a corrupt motive—How are you to punish him, when the act itself is not illegal? The motive is but partiality, and a man, without being partial, may have exercised the discretion in the same way? In order to screen a friend by suppression of evidence, he refuses to reprove a man legally convicted of a capital offence—Who can say, with the confidence necessary for inflicting punishment, that this was his motive, when it is of the essence of a reprieve to be granted or refused at pleasure? Read the reports made to the House of Commons in 1781 and 1782, and see how possible it is for hearts hardened and understandings depraved by English jurisprudence, to turn a country upside down, and make a people miserable, without giving a hold to punishment. Accordingly, the power of amotion, exercised in one instance, seems to have administered some check to the mischief: though punishment, after having been attempted, has been abandoned as impracticable.

in one use of the permanency of salary notwithstanding amotion.

Age will not draw the line: one man's faculties serve him better at eighty than another's at threescore. The last person to acknowledge them deficient, will commonly be the man himself. They will be good enough for other men's business, when they suffice no longer for his own.*

3. Thirdly may be mentioned *harshness* and *ill-humour*:—the failings that stand opposed to the minor virtues of *affability*, *patience*, and *condescension*. Ill-humour tends to precipitation: and the variety of ways in which precipitation may operate injustice, have been already stated:† a man might as well judge without documents, as not allow himself time for considering them, and giving them their due weight. Harshness and ill-humour tend to injustice in another way: by intimidating the suitor, preventing him from displaying his case to its best advantage, and thus sacrificing the modest and the timid to the bold and resolute; those who have the best title to favour, to those who have least need of it. It is rather difficult to conceive a judge, unexceptionable in other respects, removed for this single cause: but it is still more difficult to conceive that, with the power of amotion hanging over his head, a man should in this way expose himself to the exercise of it; especially when the injuring his prospect of promotion would, in every rank but the highest, be a still more certain consequence.‡

4. Under the general term of *hastiness* lurks a particular vice in judicature, that has scarcely yet obtained a name—a sure sign that the importance of the opposite virtue has never been noticed as it deserves. It consists in the judge's taking for his sole object his own private satisfaction relative to the merits of each question and the rectitude of each act: not staying to inquire of himself whether the whole proceeding, if spread open before the public exactly as it took place, would wear the same face of propriety in the public eye. He makes up his own mind: and what other people may think about the matter, is what he forgets or disdains to ask himself. His own mind is made up—and those of other men, if they will be impertinent enough to intermeddle, are left to make themselves up as they can. It is by this faculty of annihilating the public, and putting self into the vacancy, that some men have got a name, by trying causes, as if for a wager, *against time:* so many causes within the hour; as men of inferior ambition run miles, drink pots of beer, and ring bob-majors. Under a system of judicature in which, after six months spent in doing nothing, the longest cause is squeezed into a day, and as many as a province can afford in half a year into two days, this talent, so long as it confines itself to the theatre which thus calls for it, is neither without its apology nor without its use: and admiration is divided between the master that can see such work done, and the workman that can go through with it. But under a rational system, all these modes of self-satisfaction would be ranked together, with no other difference than what the effect upon public satisfaction may prescribe. To the

* I avoid insuring to a man the continuance of his salary upon resignation, for the obvious reason of not turning the establishment into a nest of sinecures. When a judge desires a retreat, he has but to get a friend to propose his amotion on the ground of a decline of faculties, and signify his concurrence. In the same way he may soften the harshness of amotion, when the proposition does not originate with himself. Pensions of retreat, as given in England, operate much more effectually as a fund of peculation and corruption, than as a remedy to this grievance. The cases where the pension is granted are, where a lazy judge has a minister for his friend, and where the minister has a friend whom he wants in the judge's place. The cases where the pension is not granted are, where the judge is too incapable to pretend to do business, and where he does it so badly that his not pretending to do it would be a blessing. Examples of both these cases are fresh enough in memory.

The power of amotion, lodged in the King upon address from the two houses, is in such a case a remedy only in name. Who cares enough for justice, to make an invidious motion against an obnoxious judge? How could such a determination be formed without evidence? and how could evidence be had, without trying over again, and that in each house, the causes in the course of which his incapacity is supposed to have displayed itself?

† Ch. IV. § 1.

‡ In English judicature, notwithstanding the purity so justly celebrated in the higher class of judges, a deficiency in these minor virtues has been no unfrequent failing. The difference in this respect is said to have been remarkable between single judges, and courts in which four judges sit together. The same man who has been complained of as stern, hasty, and dogmatical, when sitting alone, has been observed to have assumed the opposite virtues, and that notwithstanding a rise of rank, when checked by the presence and co-ordinate authority of three colleagues. This has been represented as a palliative to the indisputable inconveniences of numbers in judicature: the more so, as from such hastiness injustices have not unfrequently been observed to arise, though without improbity, because without any intention or consciousness of injustice. Certain it is also, that, though since the days of Lord Bacon there has been no such thing as a corrupt chancellor, there has been no want of rough and surly ones. This use of numbers, whatsoever may be its importance under the English system, would be nothing under mine. Under the English system, no right of election—no power of amotion in the people—no dependence on the people for promotion—appeal too expensive to be within the reach of an ordinary purse.

good effects of the power of amotion, may therefore be added the natural tendency it has to put a check upon velocity in judicature, having such forgetfulness for its cause. Should a judge look upon his own satisfaction as everything, and that of the people as nothing, they, with somewhat better reason, may look upon his as nothing, and their own as everything. But a judge amenable to the people, and removable by the people, will know better than to put them to the trial. The sort of instinct created by an habitual sense of interest, will teach him upon the bench, what reflection and investigation may teach the philosopher in his closet — that apparent justice is everything, and that, in the civil branch at least, real justice, except as productive of apparent, is of no use.

"Oh, but independence! What becomes, at this rate, of your judge's independence?" What care I? The thing necessary to a judge is *probity:* and probity, we have seen, is the result, not of independence, but of its opposite. — "What, then, is independence, after all, of no use?" Oh, yes: of great use, under a despotic or corrupt constitution; and, for the same reason, of worse than none, under a sound and popular one. In the former instance, it is *independence* that has received the praise, but in every instance it is *dependence* that has earned it. Independence is a relative term: according to the object you refer to, so is your doctrine about independence true or false. Independence, as against individuals, is favourable to probity. Why? Because it leaves a man more dependent than he would be otherwise on the opinion of the people. Independence, as against a despot, is favourable to probity. Why? Because it not only *allows* a man to obey those influences which strengthen the bands of his dependence on the people, but *obliges* him: for under a despot, the strength of the people is the only prop that independence, as it is called, can have to lean on. It is dependence, then, *dependence* in the true and absolute sense of the word, that is the cause and measure of that relative quality, which has been so much magnified under the name of *independence.* Is independence, true and irrelative independence, favourable to probity? Then so is despotism: for, what is such independence but despotism? Independent would you have your judge? Of whom? Of a despot, doubtless. But why? only that he himself may be one? If a despot had nothing amiss about him, where would be the harm of being his tool? When you fly to independence for protection, what is it you are afraid of? Is it not despotism? and do you think to save yourself from it, by running into its mouth? What mean you by the word *despot?* What, but a man on whom others are dependent, while he himself is independent of every one? On a judge, all men are dependent, as far as they are subject to his jurisdiction. Have you made him on his part independent of every one—independent of the people? He is then the very thing you mean by a despot, or the word *despot* has no meaning. Is your despot to make a good judge, merely because there is nobody above him, or on one side of him, to make him otherwise? Nero, Caligula, Commodus, and Caracalla, would then have made good judges. Set a man above the people, let him be above caring for what they think of him, indolence alone, without any other tempter, is quite enough to make him an abominable judge: he will come upon the bench constantly drunk, as in former days English chancellors have done every now and then: he will hear a cause between sleeping and waking, and, as he opens his eyes, yawn out, *Judgment for the plaintiff*, or *Judgment for the defendant*, as the one or the other phrase happens to come uppermost: he will order the traveller to be hanged instead of the highwayman, and then laugh at the mistake.

Under the former government in France, the courts of judicature called parliaments were as independent as anything could be under the shadow of an arbitrary sceptre. What came of the independence? Good and bad at the same time: good, as far as it was dependence; bad, as far as it was independence: good, as far as it was independence with reference to the monarch; bad, as far as it was independence with respect to the people. Virtue and courage, derived from legitimate dependence, made them the heralds of the States-General; corruption, derived from the dream of independence, made them rebels to the National Assembly.

"What, then, would you make your judge the sport of every gust of passion which may overbear for a moment the reason of the people?" No, certainly: and I take care he shall be so in no case. But why not? — That he may be independent of their opinion? No, surely: but that his dependence on it may be the more genuine and the more secure. Individuals or bodies, speak of their *opinion*, what mean you? The opinion of the moment? No: but the opinion of their lives. Their opinion in a storm? No: but their opinion in fair weather. The opinion that has been stolen from them by the lie of the day? No: but the opinion that succeeds it, when time and detection have condemned the lie of the day to silence. Speak of the opinion of a body, what mean you?—The opinion of a smaller part of it, or of the majority of a moment? No: but of that majority which keeps the field and governs. It is for this cause amongst others I preserve the salary, should the office be withdrawn without specific delinquency judicially pronounced.

But though I could find for my judge no sort of shelter, much sooner would I commit him even to the mercy of the storm, than run any risk of seeing him either a despot or a despot's journeyman. How much better that the *one* should suffer now and then through the fault of the *many*, than the many be continually suffering through the fault of one! Will such dependence be hurtful to his probity? No: for though even the most upright conduct should be no absolute security, yet upright conduct will be always his best chance.

But I have not that horror of the people. I do not see in them that savage monster which their detractors dream of. The injustices of the Athenians, had they been ten times as frequent as they were, would not, in my view of things, be much to the present purpose. Had the Athenians representative bodies?—had they the light of two thousand years of history to guide them? or the art of printing to diffuse it? When the Athenians were cruel and unjust, were the Dionysiuses and Artaxerxeses less so? In the people, injustice has at least been followed by repentance: acting in bodies, and especially under the veil of secresy, they have not that pride which keeps men from growing better: a despot, when he has injured a man, hates him but the more. As little would my notion of the probable conduct of the people, that is, of select men chosen by select men, in the exercise of an unquestioned right, in quiet times, be taken from the conduct of a few unknown individuals among a vast multitude, in the heat of a revolution brought on by excess of despotism. Much sooner would I look to America, where the people bear undisputed sway, and ask, in so many years of popular government, what violences or injustice to the prejudice of their servants have ever yet been presented by the history of thirteen commonwealths?

But if the people are not fit to exercise judgment, in a case of necessity, and that a case which may never happen, what shall we say of the system which puts them to judge constantly and in all cases? If chosen men among them are not fit to judge, what shall we say of men taken without choice? If the majority of a body so selected is in so rare a case no safe reliance, what shall we say to them when taken at random in so small a number as twelve? Yet such a system, because an old one, is looked upon as the *causa sine quâ non* of all possible security, by those who for the opposite reason would tremble at the thought of committing to any assembly that could be called a popular one, the power of ridding themselves of a bad judge. But of this under the head of juries.

§ 2. *Inconveniences of Periodical Election without power of amotion, and with or without intervals of exclusion.*

That judges ought to be in a state of dependence with regard to the people, is a proposition that in the National Assembly seems to have met with very general acceptance. But for the efficient cause of this dependence, instead of a power of revocation, short leases and frequent renewals have been proposed, accompanied even with forced intervals of exclusion.

That the latter mode possesses, in comparison with the former, any the smallest advantage whatsoever, will, I believe, never be shewn.

Disadvantages it possesses the following; and those of no inconsiderable importance:

1. *It throws away the benefit of experience:* a sort of profusion very ill reconcilable to the rules of prudence. The notion of facility in the business belonging to this office is very good as a wish, but very ill-considered as an opinion. *The necessity of technical knowledge, of an acquaintance with the complicated and discordant system of judicature as still subsisting, is but a temporary one.* Be it so: but though the laws were as simple as angels are pure, judicature could never be brought within the competence of an uninstructed and unexperienced mind. The application of the law to the fact, the inquiry whether the evidence as exhibited brings the matter of fact within any of the species laid down in this or that part of the general map of law, is a task that is and ever will be liable to require a considerable skill in the value of words, a considerable degree of proficiency in that abstruse and formidable branch of science, distinguished by the repulsive appellations of *logic* and *metaphysics.* The putting together and weighing one against another that multitude of obscure and discordant links, which a cause will sometimes exhibit, of a chain of evidence, is a task to which no ordinary powers of discernment will be equal: the investigating them is a pursuit to which no vulgar measure of sagacity will suffice. In all other lines, shall practice be essential to improvement, and in this alone a matter of indifference? Are men bred tailors or shoemakers by nature? and is there less difficulty in trying a long and intricate cause, than in making a pair of breeches or a shoe? True it is, that to certain purposes, and as far as concerns a few simple operations, every man is called upon—every man may be more or less qualified, to be a judge. But in what way? Just as every man may upon a pinch be called upon to be a tailor, a shoemaker, a physician, or a practiser in any other mystery. Does that prove that all men can make shoes, one man as well as another, and every

man without having learnt it? No, certainly. Causes there doubtless are, that may be judged by almost anybody: I will go farther; the bulk of causes may be in this case: but the causes that come before the judge so called, are among the most difficult and most intricate that the treasury of human transactions furnishes; and it is particularly for them that he is constituted judge.

Once more, note the distinction between *real* justice and *apparent:* instinct may serve a man to *do* justice; but it requires cultivated reason to show that justice has been done: to make it appear even to the bystanders, who see every thing as it passes: much more to the judge above, who has seen nothing about the matter: to observe the rules laid down by the law; and to prove, against the severest scrutiny, that those rules have been observed.

No art, no science, no corner, however obscure, in the obscurest art or science, that may not furnish questions for the decision of a judge; and judges, it has been thought, may be taken from any counter, or from behind any hedge!

The value of a common soldier increases with every day of service: and is the discipline of the judgment-seat a matter of less difficulty than the discipline of the ranks? In the military line, the hardship of compulsion gives the only objection against a man's being kept to the profession so long as he is able to handle the implements of it. Shall the soldier, though averse to his station, be confined to it; and the judge, though wedded to his, be turned out of it without mercy?

2. *It weakens the authority of courts of appeal*, by destroying the only natural title which one court can have to more confidence than another. Superior skill rendered probable by superiority of experience — popularity proved by continuance in a station from which unpopularity would have removed him — such is the certificate of superior merit which a judge of appeal has upon my plan to produce. Adopt the system of periodical exclusion, and as soon as a judge has acquired a little experience and reputation, you deprive yourself of his service.

3. *It is prejudicial* to the legitimate dependence, or what is commonly called *the independence of the judge.* It lays him at the mercy of the interest or the caprice of any individual who may happen for the moment to be in credit with the people. While he is drudging at his duty, up starts an advocate at the election town, catches hold of some unlucky incident which had made him enemies, harangues the people, turns the tide against him, and seats himself in his place. Can you expect him to sit still and see himself attacked, without taking measures to defend himself? While he should be thinking of doing his duty, he will be thinking how to keep up his interest: while he should be judging the people, he will be thinking how to court their leaders.

"And may not all this happen just as well under the power of amotion?" By no means. There is a wide difference between turning a man out point-blank, where there is nobody to compare with him, and indirectly by the preference given to another. In the first case, you must make him out to be absolutely unfit: in the other case, all you have to maintain is, that there is some one person in the world fitter. In the one case, you load yourself with the unmixed odium of accusation: in the other case, you find relief in commendation. In the one case, it is all pure hostility; in the other case, while you provoke an enemy, you gain a friend.

4. *It exposes him to the contagion of partiality.* The private connexions of a judge in full business (and *mine* can hardly be otherwise,) will stretch but little beyond the narrow circle of his family. His suitors and his audiences are his visitors: duty gives him these connexions, and time scarce allows him any other. When you have turned him out of his seat, and taken his occupations out of his hands, what is he to do with himself? He must mix again in private circles, and endeavour to find in social intercourse a compensation for what he has lost in power and dignity. You throw him upon the town: you send him to form connexions and contract partialities; and when you have thus corrupted him, you let him come back again to his place.

5. *It aggravates inequality, and strengthens aristocratical monopoly*, by rendering the situation untenable to every one who has not a fortune of his own suitable to the dignity of the office. A man may judge at intervals, but can he live at intervals? Suppose a man, whose profession is his subsistence, taken from it, and made a judge. When he is a judge no longer, what is to become of him? Is he to go back to the bar, or to the desk, or to whatever other livelihood he had before? He is then to form connexions and to break them, to become partial and impartial by turns, to take money from people, and to behave to them as if he had taken none. He is to favour great families while he is on the bench, that they may give him their custom when he returns to the bar, and help him to mount the bench a second time. Elsewhere I shall have occasion to show how much the less fit a man is for the service of justice, for having ever been, though it were but for once, in the service of chicane. How much worse, if he is to serve them alternately? As well might he pretend to serve them both at once.

How would it be possible for him, if it

were fitting? In such a line, who is there that can take up business and drop it when he pleases? When his clients are gone to other lawyers, who is to send them back to him? But if the law affords him no resource, where else is he to find one? A man who has been thinking about nothing but law all his life long, what else can he be good for? No man, therefore, who is not able to live at his ease without the salary, will meddle with the office; or, if he does, so much the worse for the service: no man who is at once honest and prudent will venture to engage in it. But if no honest and prudent man who cannot do without a salary will accept of the office, why give a salary? Inconvenience presses upon you on all sides. Either you get nobody for your office, or you get somebody who is not fit for it; or if you get a fit man, you make him an unfit one; and, at any rate, if you give money with your office, it is so much thrown away. Is wealth necessary to tempt a man to accept of power and dignity? I should not think so: but of this presently.

Be this as it may, by giving the wealthy the monopoly of this great office, with a salary to boot, you increase that inequality which, as far as can be done without prejudice to the superior interests of security, it should be your study to reduce. You divide the people into two classes, excluding one of them from their share in the common benefits, while you leave them their full proportion of the burden. You lay a tax upon poor and rich, to give the produce among the rich, seeing they are too rich already.

By this injustice to individuals, is the service at all benefited? On the contrary, it is injured. You shut out candidates, and you shut out those who are most likely to be most deserving. What is it that makes a man fit for business, but application? Who applies most —the man with a large fortune, or the man with a small one? Which is most likely to devote himself to dissipation—he who has the means for it, or he who has none? which to lay in the greatest stock of merit—he who sees nothing but merit that can give him consideration, or he who has already in hand that of which merit could give him but a chance?

Fancy not all this while that you are to endow offices, only that they may lie open to poor men: for it is but a bad method of serving the poor to tax the multitude of them only to make a purse for one. But when offices are to be endowed at any rate, and a given sum is allotted for the purpose, what you are fully warranted in doing is, to avoid giving the preference to that mode of disposing of it that would exclude the poorer man from coming in for his share. An office like this would not leave such a man as it found him: it would leave him beset by extraordinary wants, while unprovided with so much as ordinary means.

The obviating of all this inconvenience is one of the uses of the permanence of the salary, notwithstanding amotion, whereof more a little further on.

6. *It endangers the peace of the country*, by keeping up the ferment of a perpetual election, by inviting change, and producing party divisions among the people.

7. *It endangers morals, by the incitement it affords to calumny.* The falsehood is detected—but it has done its office; the upright judge has been thrown out, and the calumniator seated in his place. There rests he very quiet, enjoying the fruits of his wickedness till the next election, though it be seven years to come. But long before that time the lie is forgotten; and now, if opposed, his sole concern is how to invent more. This is one of the most copious sources of that tide of profligacy which elections upon the English plan bring in their train. Substitute or add the power of amotion, you crush the incentive in its birth. Calumny has displaced a man; returning truth will reinstate him: infamy often, disappointment at any rate, will be the author's ultimate reward.

I am aware here of false geography. I am not so far misled by names as to transplant English mischiefs upon French ground. I am sensible how wide the difference between a French election and an English one, and how slight the inconveniences of the latter to those of the former. Bribery, drunkenness, and the insolent meanness of personal solicitation, are here certainly out of the case. Secresy of suffrage kills corruption in all its shapes, by disarming it of its hold. I am no less aware of the difference between an election by the body of the people, and an election by the elect. But lying on the behalf of the candidate, and party dissensions among the people, are evils, to the latter of which the virtues of the French discipline afford but an imperfect remedy, and to the former none at all. This probity, of which it is so effectual a preservative on the part of the electors, by leaving no resource but imposition to improbity on the part of the candidates, will afford to fraud and calumny an incentive but so much the more powerful. Calumny on the part of the candidate is a tribute of acknowledgment paid to the virtue of the elector: "It is because you mean to give your vote to the most deserving, that I take all this pains to make you believe my antagonist is not he." The man who canvasses with a bribe in his hand or upon his table, may save his indolence from a deal of trouble, and his candour and veracity from a deal of danger: the strength of his cause lies not in the plausibility of his pretensions, but in the goodness of his liquor, or in the heaviness of his purse.

The elections which my system admits of, threaten no such mischief. They come on at rare and unexpected intervals: they present a prize to gain, not a livelihood to lose: the competition they give birth to, is a contest for distinction, not a struggle for existence.

These inconveniences, and greater, would be of slight account in comparison of the evil of a despotic judge: but when that is so effectually got clear of by the simple power of amotion, frequent election is perfectly unnecessary, and the evils of it stand uncompensated.

Give the power of amotion, forced intervals of exclusion are useless and unnecessary: withhold it, they are inconsistent and absurd. You won't let your judge be turned out when there is reason for it, and you turn him out without mercy when there is none.

The use of periodical exclusion, if it has any, is confined to administration. It may serve to break confederacies among bodies of trustees, and render it more difficult for them to keep up plans of conspiracy against the interests of their principals. It may serve as an antidote to that sort of mismanagement which is the fruit of indolence, by transfusing young blood into the old body. It may loosen, in some degree, the shackles of that corruption which is the effect and the object of arbitrary patronage. It may serve as an help, or as an imperfect succedaneum, to publicity, seconded by the power of amotion: it may serve as a spur to the habitual lethargy, as well as a check to the occasional violence, of dark despotism. It may serve as a palliative to the abominations of an East-India-House: but what has it to do with single judges administering open justice?

Next to the having no periodical elections, is the having them as frequent as possible. Why? Because the oftener they come round, the less the danger is of a change. As the mischiefs of changing so often as you might change are so palpable, and as you see no more reason for changing one time than another, you e'en take things as they are, and enter into a sort of implicit engagement with yourself not to change at all.

This is no speculative conjecture: it is but a key to facts offered by experience. In England, wherever regular succession is not the object,* annual elections prove in effect appointments for life, subject only to a periodical power of amotion, which is rarely exercised:† while longer terms produce frequent changes, and still more frequent struggles.‡

Alternate subjection in this way has been represented by some as a pledge of virtue in a judge: periodical exclusion, therefore, as a necessary condition to such reciprocity of subjection. *Return your judge from time to time into the mass of the people, that he may see before him the time when he will be subject to others, as now others are subject to him. Thus will you have him equitable, indulgent, circumspect: he will fear to tyrannize, lest tyranny should expose him to retaliation.*

This is plausible, because it is obscure: dispel the obscurity, the plausibility goes along with it. Why plausible? Because it conveys implicitly the idea of dependence on the body of the people; and so far it is just: does it mean anything else? so sure is it delusive.

A thing it seems to take for granted is, that a judge, if not judgeable by those whom he has been judging, is not to be judgeable by anybody. Why suppose so? It need not be so upon any plan: it certainly is not so upon mine. Being judgeable at any rate, the true question is, whether there is any advantage in his being hereafter to be subject in this way to those who are at present subject to him — in his being subject to them rather than to anybody else. I answer — in no case any advantage: in a case which is not improbable, much inconvenience. Either he can foresee the particular individual to whom he may hereafter be subject, or he cannot. If he *cannot*, the reciprocity, as such, has no effect: the miscellaneous body of the people are all he has to look to, and the reciprocity amounts to nothing more than simple dependence on the body of the people. If he *can* foresee his successors, it renders him dependent on those individuals for the future, as they for the present are on him. What fol-

* Examples: Lord Mayor of London: Sheriffs of London.

† Examples: Chamberlain of London: Chairman of the justices of the peace for Middlesex: President of the Royal Society.

The chairmanship of the justices of the peace for Middlesex affords an instance which has its value, both as an example of a sort of popular election with regard to a judicial office, and as having afforded experimental proof of the utility of the power of amotion. The chair is indeed filled by a similar mode of election in every county: but the quantity and importance of the business in a county which encircles the capital, distinguishes this chair from the rest, and assimilates it in some sort to the higher seats in judicature. The electors are indeed all named, and displaceable by the crown: but as it has not been customary to remove a magistrate but for known and avowable causes, the situation is not in practice very wide of independence. The last chairman (since deceased,) after having been annually re-elected for a long course of years, was at last dropped, not without good cause. In probity as well as ability he stood unimpeached: expulsion in the way of punishment could never have found ground to fix upon: but being sometimes capricious, and always morose and overbearing, his amotion in favour of the gentleman who now fills the office was felt as a public benefit.

‡ Examples: Member of Parliament: East-India Director.

lows? Mutual fear, mutual favour, mutual corruption. *Judge not, that ye be not judged:* their union will be a comment on that text. Each is to the other what the Lord's debtors were to the unjust steward: each pays his court indeed to the other, but it is at the expense of their common lord, the people.

This principle of reciprocity of subjection as between public men is but a particular modification of the old principle of the division of power: and like that, a distant approximation, a bad succedaneum, to the regular supremacy of the people. Reciprocity of subjection is a particular mode of mutual dependence. Single dependence on any body but the people is a bad thing: mutual dependence is the same bad thing doubled. If they are all dependent on the people, what more would you have? and what do you get by making them dependent upon one another? If they are not dependent on the people, what do you get in that case? Two or three despots instead of one: a warring tyranny instead of a quiet one: or a quiet one bought at the end of a warring one with the blood or treasure of the people. Look at old Rome: see there the fruit of mutual dependence: — it unites Crassuses, Cæsars, and Pompeys: it unites Octaviuses, Lepiduses, and Anthonys. Look at Bengal: it unites Hastingses with Impeys.

Dependence on the people, or on individuals; on the whole, or on a part: there is but that alternative. Dependence on individuals known, is the very mischief to be avoided: dependence on individuals unknown, is but another word for dependence on the people.

If reciprocity of subjection, as contradistinct to simple dependence on the people, were of use anywhere, it should be in legislation: but it has nothing in it even there. In legislation (I always mean under a popular constitution,) it is not liable indeed to produce such mischief as in judicature. Why? Because in the former case it is not liable to produce connivances and confederacies as in the latter. A man may or may not be able to see over his own canton, so as to give a guess who will succeed to him as judge. What is certain is, that he cannot see all over France, so as to name to himself the majority of a future legislature. He could not, even in Great Britain, as to more than one of the two branches of the legislature: even in Great Britain, where public trust is private property, and where the people, like other cattle, are passed from hand to hand by succession or by sale. He cannot, therefore, see whom to court, nor whom to confederate with. But, even in legislation what does this reciprocity of subjection amount to? It is still but popular supremacy viewed through a confused medium. It is useful. Why? No otherwise than in virtue of the necessary connexion it has with the precariousness of a seat in the legislature, and with that species and degree of dependence on the people which is the consequence. *Irremovable*, a man might make his own division of the fruits of law: to himself and colleagues, the choicest of the rights; to the people, every thing that savoured of obligation: *removable*, you may be pretty sure of hi- not forming any such plan, nor so much as pursuing it but very slowly: for, unless it be very slowly indeed, where is the people, even in Britain, that would suffer him to go on with it?

Suppose, instead of a House of Peers and a House of Commons, two houses of peers, governing in tie, as Castor and Pollux lived? What would the people be the better for it? Great civility, or else open war between the future and the reigning sovereign: amity or enmity, the costs would still fall upon the people: great admiration of the excellence of the constitution, and of the wisdom of its inventors. But what would the people be the better for this civility and these fine sentiments? Peace or war, their shoulders would bear all the burden.

§ 3. *Permanence of Salary, notwithstanding Amotion.*

The permanence of the salary, notwithstanding the power of amotion, is a help to the constitution in a variety of shapes:—

1. *As an aid to the power of amotion.* By softening the harshness of that power, you increase its efficacy. Who could find in his heart to strip an old man naked, after a youth of blameless or meritorious service? The more essential interest of the community would thus be sacrificed to compassion for the individual. Even incapacity and ill-temper, if unstained by improbity, would find in compassion very powerful antagonists to justice.

2. *As a support to independence:* meaning always that species and degree of it which we have seen to be of use to probity. On such terms, and hardly otherwise, a man may be expected to bear up against what he looks upon as the ill-informed, the momentary and partial opinion of the people, in expectation of a different decision from their well-informed, permanent, and general opinion. Mere disgrace can seldom be oppressive, when conscience certifies it to be unmerited. When facts are out of dispute, a sense of innocence, and a proportionable persuasion of seeing it one day recognised, are sentiments scarce distinguishable. But in the meantime a man must live.

The same expedient contributes to the same effect in a more indirect way, by its influence on the people. In public as well as private, the honesty of the servant depends in no

small degree on the wisdom of the master. Servility, duplicity, craftiness, and inward contempt, on the one part, are natural consequences of caprice and tyranny on the other. There have been no greater contemners nor deceivers of the people than leaders of factions in unenlightened and unquiet times.

How then does it assist the wisdom of the people? By keeping them from edged tools. In the power thus modified, they possess an instrument which answers every purpose of self-defence, but has been spoilt for them as an instrument of vengeance. They will not be rendered the less cautious how they use it wantonly, by the consideration of what they will have to pay for using it. Compassion is never so well heard, as when she has prudence on her side.

3. *As a help to the patriotic auction.* Much could not be expected for an income of which no man could promise a day's continuance: and a source of economy, otherwise so promising, would in that case be dried up. This is not a consideration to be placed in front of the inducements: but it is a full answer to all objections on the score of expense. The expense may perhaps never be incurred: it never can be, where the people who are to judge are not satisfied of their gaining more than they lose by it: while the value of the place, considered as an object of sale, is raised from that of a tenure at will, to that of an estate for life. Individuals cannot give so much to hazard as may be given by an establishment.

4. *As an inducement to venture the labour and expense of a professional education.* Conceive the station altogether precarious, and the salary as precarious as the station, how few are there who would take any trouble to qualify themselves for the duties of it? Who in England, or anywhere else, makes a serious study of the law, that does not expect to get by it? Hence the ignorance so universal among English legislators, and the thraldom in which they are held by mercenary lawyers. In France, judicial offices having been saleable, and of course for life, the emoluments offered a secure pennyworth for everybody's penny. In England, the bar being a necessary step to the bench, the more immediate profits of the former station have presented a fund of inducement, independent of the hope of rising to one of the few seats in judicature. Upon my plan, which regards the professions as not only distinct but opposite, and practice in the one as not only not the best, but in many respects the worst preparative for a station in the other, a separate inducement applicable to the latter is the more necessary.*

5. *As an antidote to aristocratical monopoly.* In the preceding section, we saw the inconvenience, and the necessity of this remedy.

§ 4. *Power of Deputation.*

The power of deputation is an essential article in the plan on several accounts: 1 As an aid to the people's right of election, preserving them from the danger of an improper choice: 2. As an instrument of promptitude in the hands of justice: 3. As a measure of economy.

1. *As an aid to the people in the exercise of their right of election.* In this capacity, it requires itself the assistance of the principle of *gradual promotion.* It is not sufficient that the people have the faculty of choosing their judges out of men who have served in the capacity of judge-depute: they must be precluded from choosing them elsewhere. It is without much compunction that I rob them thus far of their choice. It is the very case, and that the only one, where they could have no grounds for choosing. Public fame will tell them who *has* proved the best judge, after trial: private acquaintance only can say, before trial, who, among young and untried men, is *likely* to prove a good one. The circle that bounds their choice will hardly be complained of as a narrow one. A judge to every canton gives above four thousand judges of the lowest rank: a deputy to each judge gives the people in every election four thousand candidates to choose out of. And in the instance of judge-deputes, as well as of principal judges, I secure to them the power of amotion; in comparison of which, the right of election, as hath been already shown, is an object of insignificance.

In return for so slight a sacrifice of arbitrary power, they gain a security not attainable by any other means, for intelligence, probity, and every other ingredient of fitness in a candidate.

On what other plan can the patron be made responsible for the goodness of his choice? What other plan gives the benefits of apprenticeship to judicature, and affords room for fitting the task in every individual instance to the powers of the workman? Choose him

* Considering how easy we have seen it to be, for a judge who wants the sense of shame, to misbehave in a very gross degree, and that even through corrupt motives, without exposing himself to judicial censure, it might perhaps be not amiss to empower the people to follow up their amotion by subtraction of the salary, so it be after such an interval as should out-reach the utmost duration of sudden and undeserved unpopularity: for example, five years. It might otherwise be possible for a judge who was at once indolent and shameless, and who had no pretence for resignation, to provoke amotion, in order to retain the pay after ridding himself of the trouble. A deprivation so very unlikely to happen, without the wilful default of the person deprived, could hardly operate any sensible diminution in the value of the office in any point of view.

as you will, your judge, like everybody else, must begin somewhere. Upon the ordinary plans, he begins in the middle: important or trifling causes, difficult or easy, he must take them as they come. Upon this plan, the deputy, receiving his causes from the discretion of his principal, will of course see his task suited to his faculties: the least important and the least difficult, one may be well assured, are those with which the veteran will entrust a pupil, for whose misconduct he stands responsible. Accident may bring a cause of difficulty as well as importance upon the deputy at the very commencement of his career: true; but Telemachus will never be without Mentor at his elbow: so that the worst that can happen is a measure of delay much too small to have ever hitherto been deemed worth notice.

2. *Promptitude of justice* is a separate and still more manifest advantage resulting from this power: and which, without some such power, must necessarily be to a certain degree precarious under a single judge. Not only illness might occasion a suspension of justice for an indefinite time, but the *out-door* business incident to the office must occasion frequent vacancies.* Numerous bodies of judges, while they guard against this inconvenience, admit necessarily a fluctuation in their number, and thence a degree of uncertainty, besides the other inconveniences that we have seen attached to multiplicity in judicature. Doubling the number upon the establishment, would double the expense: though it is not double nor treble the number, nor, in short, any definite number, that could equally ensure the accomplishment of the purpose.

3. *Frugality* is another advantage peculiar to this mode of supplying occasional vacancies in judicature: in this way, and in this alone, you may get the services of several judges for the expense of one. The grounds for reckoning upon this saving will be stated presently. The object is no trifling one, when the question is between such numbers as four thousand, eight thousand, or twelve.

Against unpopularity, and every species of unfitness, the station of the judge-depute has every preservative that applies to the office of his principal: publicity, appeal, loss of promotion, danger of dismission. It has more: for nothing less than a formed unpopularity will suffice to remove the principal: a commencing unpopularity will be a warning to the principal to intimate to a deputy who has the misfortune to become the object of it, the expediency of resignation. The principal, upon amotion, preserves his salary: the deputy, in case of the same misfortune, loses his prospect of salary, as well as of everything else that has been the object of his ambition. The power of amotion is, at the same time, liable to less restraint, as well from prudence as from compassion, in this instance, than in the other. The people, by exercising it, will not subject themselves to the burden of an additional salary: and what they cannot fail observing is, that in the commencement of a man's career, while other roads remain open to him, the mortification of a repulse, how severe soever at first, will be a less cruel shock than expulsion at a more advanced stage.

From the connexion, close as it is, improbity can derive no assistance. Neither can screen the other. By confederacy, danger would be doubled, and facility in no respect increased. The dependence of the one is a necessary consequence of the responsibility of the other: and where can be the danger to the people from a dependence between two of their servants, each alike dependent upon the common master?

Sit who will upon the bench, somebody must have put him there: and who so well qualified to judge of fitness for an office, as one who has made the duties of it the business of his life?

This mode of appointment, were it even divested of the purifying virtue of the superintendency of the people, would still remain superior to any of the modes hitherto current in France or England. In France, judicial offices have been venal: that is, the seller and the buyer between them have concurred in nominating a successor to the seller: motives on both sides purely pecuniary: no responsibility on the one part, no opportunity of instruction on the other. In England, the chancellor or the minister, determined by the need of creating an adherent or the satisfaction of serving a friend, succeed, according to their degrees of credit, in getting their recommendations accepted by the king: in both cases without the check of any specific responsibility. Under such corrupt systems, has abuse been rare? Much more will it be so under a pure one.

For such a station, want of candidates can hardly be apprehended. Of itself, it confers great power and dignity: it is a step to greater, with emoluments affording a provision for life. Even the dignity, without the emolument, would to many eyes be a full recompense for the trouble. Under favour of the instruction and superintendence of which it has the benefit, men may be admitted to it at an earlier age than could prudently be intrusted with self-subsisting judicature. At the commencement of every career, service is gladly exchanged for the opportunity of acquiring, and by degrees of displaying, capa-

* Such as taking views of the condition of immovable objects: taking the examination of bed-ridden parties or witnesses: settling disputes or quieting tumults among bodies of people upon the spot.

city for employment. Apprentices are never wanting for the meanest trades: they will hardly be to seek in the most exalted of professions.

What is worth accepting is always found worth giving. The burden of responsibility will hardly be thought to destroy the value of the patronage. In what trade is not the master responsible for the apprentice? The faculty of suiting the task to the ability of the workman, is a security alike valuable to both.

The power of appointing a constant deputy would still be inadequate to its end, without the power of calling in occasional assistance. The permanent deputy is absent from the judgment-seat upon out-door business: the judge-principal is too ill to attend to business: why should the judgment-seat remain empty, if a person not incompetent can be found to fill it? Both judges are sitting: but one of them has got a petty assault or two to hear; the other, half a dozen debts to decree payment for, which are undisputed and undisputable. A case of difficulty and importance presents itself on a sudden, requiring some order to be taken in it without delay. Why keep half a dozen different groups of suitors waiting for a sort of justice which they might have from anybody? For, let it never be out of mind, that the bulk of cases that call for justice are those in which the demand for power is much greater than for wisdom. All the checks and securities which apply in the one instance, apply equally in the other: so do the inducements to acceptance, though with a force diminished in proportion to the lightness of the burden.

The flexibility thus given to the establishment must be particularly useful to it in its infancy. Experiments of the number of tribunals necessary, may be tried anywhere without hazard or expense. Take the committee's *cantons*, containing a space of about thirty square miles. If one tribunal to a canton is no more than sufficient where it contains but one town, and that not a very considerable one, several must be necessary where it contains several towns, or a town like Lyons, Rouen, Bourdeaux, or Marseilles. Allow of deputations, the establishment may be understocked at first without inconvenience: disallow them, waste of public money is the consequence, if the tribunals are too many; failure of justice, if too few.

Not that an advantage like this can be ever out of date. The quantity of judicial business that may occur within a given period can never be subjected to measure, scarcely to calculation. One year may be twice as productive as another. Shall the same number of tribunals be inexorably fixed for both? If so, either in the one year they must be redundant by half the number, or in the other, deficient by the whole. In the one case you have double delay; or in the other, double expense. Such is the only alternative: such the inevitable consequence of an unbending provision for ever-fluctuating wants.*

§ 5. *Gradual Promotion.*

The principle of *gradual promotion*, or, as it has been more shortly styled in French, the *gradual system*, is of use in several capacities:

1. *As an aid to the principle of popular election:* by confining the choice of the people, with regard to every rank in judicature but the lowest, to persons who have had an opportunity of showing whether they are fit for it or no. In this character it co-operates, as we have seen, with the power of deputation, taking up the object where the effects of that power end. See above, § 4.

2. *As a support in the public opinion to the authority of courts of appeal.* In this character it co-operates with the principle of *permanence of situation*, as contradistinct to that of *periodical election*. See above, Chap. IV. § 7.

3. *As an inducement to a man to take upon him the burden of a professional education.* In this character it co-operates again with the principle of *permanence of situation*. The essential use of it in this character is, however, confined to the first stage: the great object is, that the people should not have it in their power to choose any man for a judge-principal, who had not afforded them a trial of his fitness in the probationary station of judge-depute. As to higher ranks, the gradual system diminishes a man's hopes of speedy elevation, as much as it diminishes his fears of remaining unpromoted in the lowest. But the most mortifying circumstance would be for a superior to see an inferior, without any interval of equality, put immediately over his head: against this mortification the principle of gradual promotion affords a pretty effectual preservative.

Applied to the hierarchies of administration and legislation, the gradual system has

* Under the English judicature, the judges of the highest order, though they can depute nobody else, may, under certain restrictions, and frequently do, depute one another: which makes one of the thousand departures from the Latin rule that Mahometan judges in Bengal were destroyed for departing from, by lawyers sent from England to teach them justice.

When it happens not to suit the politics of the minister to have a chancellor, the seals are put into commission: and the judges are drafted into this court of equity from the courts of common law, each of the three great courts commonly supplying one: and in this way the business will go on quietly for months or years. If the common-law court cannot do so well without the judge thus taken from it, he ought not to be taken from it: if it can, the public ought not to be burdened with his salary.

been proposed to the National Assembly, and rejected. With what reason, it is not worth while on this occasion to inquire. The cases differ in several points:—

1. For the business of that sort of local administration which is committed to the subordinate representative assemblies, no highly-cultivated talent, no very long experience, no professional education, is necessary. All that is wanted is good family management upon a more extensive scale. A man possessed of that ordinary talent will find himself fit enough for the office at his first entrance, and without any course of preparatory discipline; especially as the number of members in these bodies is considerable, and, according to the plan already established, every man at his entrance will find colleagues already instructed by experience. The duties of the judicial office demand, upon my plan, the whole, and upon every plan the greatest part of a man's time: a small part of that time is as much as is expected, or even allowed, to be employed in the local administrations. In the latter case, the reward of the day may suffice for the labour of the day: in the other case, the long course of preparatory labour may require a chain of rewards in prospect, to enable a man to support it.

2. In the sovereign legislative assembly, on the other hand, genius and the talent of persuasion, endowments of the highest class and the rarest kind, are requisite; and you may be glad to get them wherever you can find them, without waiting for them six or eight years, and leaving it in the power of different sets of people to preclude you from ever getting them at all. Neither of these eminent qualifications are necessary in judicature. Discernment, sagacity, the faculty of comprehending, retaining, comparing, and distinguishing the several scenes in a long drama, are qualities essential to a judge: genius he wants not, for he has nothing to invent; talent of persuasion he wants not, for he has nobody to work upon: his duty is done when he has given a simple statement of the case before him, with the reasons that have governed his decision; and that, too, he may take his own time for.

Transcendent genius, it has been said by the partisans of the gradual system, is not wanted in legislature: it certainly is not wanted in every one of several hundred members of that body: but it is wanted in some; and so wide as the field of legislation is, and so numerous as its divisions are, one may venture to say, in many. At any rate, there can be no complaint of a redundance of talents for legislation, where the same persons are put into different committees, and the whole business is made to go on so much the slower, lest this or that part should not go on so well.

3. In regard to the bodies above mentioned, the persons on whom it is the design of the gradual system to fix the electors' choice, are those who are most likely to be fixed upon without any such regulation: for who so likely to be returned member of the legislature by his district, as a man who has distinguished himself as a member of the administrative body of the same district; especially when they who choose the one are the very persons who choose the other? What should be their inducement to prefer an untried man, to the man they like best out of so many whom they have tried? The less danger there is that their choice should fail of taking so natural a direction, if left free, the less need therefore there is of forcing it. In regard to the judicial office, the case is altogether different. The spurious progeny of justice, if admitted into the competition, would have a thousand facilities for intruding themselves into the inheritance of the legitimate. (See the chapter on Advocates, &c.) Admit an advocate to put up against a judge, he will walk over the course, because he starts alone: the judge will lose his cause, for want of being able to get a hearing.

Where apprenticeships are of no use, apprenticeships have been instituted: where apprenticeships ought to have been looked upon as necessary, there have been none, or worse than none. Apprenticeships, as a necessary qualification for the right of practising, are of no use among any class of mercenary lawyers: the client being at liberty to choose whom he pleases, the emulation kept up by that liberty is as good a pledge of fitness as can be desired. Apprenticeship, as a qualification for acting in the station of a judge, may, for the opposite reason, be looked upon as necessary. The suitor cannot choose his judge. Instead of serving in that line, a man, before he can be admitted to act as a master, is put to serve in a subaltern employment, the tendency of which is to give him a variety of qualities opposite to those which are necessary to fit him for acting his part well in the superior one. But of this too under the head of Advocates.

The gradual system has always governed the military establishment: and in that department the only complaints it has ever given birth to have been occasioned, not by its observance, but by its violation. In that line, however, nobody disputes its needing exceptions: and the exceptions are at least as necessary as the general rule. In the judicial line it needs none. The path of judicial service is smooth and even: a judge has no cannon's mouth to run into: there are no extraordinary exploits in judicature. Should occasion have called him to put his life to hazard in the support of justice, reward him, and welcome; but let it be as a man of valour, not as a judge: personal courage, how-

ever honourable, is no proof of talents for judicature.

It may be sufficient here just to hint at an institution for admitting persons to purchase distinction and rank by the obligation of attendance. Such an institution would give an additional step at the bottom of the scale. It would form a *public*, whose inspection would be more imposing than that of all the rest of the public put together. It would form the best of nurseries for judges-depute, as well permanent as occasional.

Persons consecrated from the first moment of their political birth to the pure service of truth and justice, would present a body of candidates, superior surely to the impure herd to whom the service of truth or untruth, justice or injustice, oppressed innocence or oppression, is constantly and professedly an object of indifference.

§ 6. *Of Pay, and of the Patriotic Auction as a means of regulating it.*

If there be a mode of providing for establishments, which finds out in the instance of each place, nay, in the instance of each individual placeman, the quantum of allowance best adapted to the service — which ensures to the officer that allowance, not a farthing more nor less — which promotes the good of the service at least as efficaciously as it ministers to economy — which, leaving the choice of the servant in the hands of that sovereign master to whom the service is to be rendered, and out of whose substance the wages are to come, cements the truly natural alliance between frugality and liberty; — a principle which does all this, has surely some claim upon attention. Such is that to which I have given the name of the *patriotic auction.**

1. Economy, by this mechanism, is pushed to its utmost limit. In this, as in every other branch of public service, every penny which, without hurting the service, you can save, and refuse to save, convicts you of peculation: a truth which, how much soever slighted and evaded, how adverse soever to English practice, and, if I understand right, even to English doctrine,† is seldom, I believe, openly disputed, and will be neither disputed nor evaded by the National Assembly of France. Adopt the patriotic auction, all such peculation vanishes.

By what other instrument can you adjust supply to exigency in any such line of service? Take what quantity you will, how do you know that it is as much as is necessary? If more, why give it? Why waste the substance of the people? Why plunder the poor and the industrious, to enrich the wealthy?

" The service of the public," says a professed master of economy, " is a thing which cannot be put to auction, and struck down to those who will agree to execute it the cheapest."‡ No, certainly: in services which, like the judicial, require particular qualification, not in such manner as to exclude choice: but my auction leaves choice its full liberty; a liberty which can nowhere be accompanied with full security, but where, as here, the people are the choosers.

In contracts for goods to be furnished for the public service, auction is the routine of practice. Yet even here, the rule of arithmetic cannot always be made peremptory, without sacrificing the service. Is the bidder able to fulfil his offer? does he mean to do so? Apply this to military stores: — the enemy will find you a best bidder.‖

No — the patriotic auction, applied with the reserve with which it is here applied — the *patriotic* auction, notwithstanding the epithet here chosen to distinguish it by, will not be deliberately pronounced ridiculous, unless by those who, as often as they descry anything truly useful in a plan for public service, pretend to find it ridiculous, and do their best to make it so. Of the exertions which it calls forth, public good is as likely as of any others to have been the final cause: and what is much more material, public good is sure, at any rate, to be the effect. It were hard if a man may not be permitted to flatter himself with the name of *patriot*, giving as unequivocal proofs of patriotism as any that patriotism can give. If personal considerations, perceived by him or unperceived, mix with the purer principle, to what end should any invidious hand attempt to tear the secret from his breast?

2. Will the service be prejudiced by such economy? It will be richly benefited by it. Daub your judge's bag over with gold, you set

* For shortness sake I confine the expression all along to the *voluntary* auction, though the effects ascribed to it depend in part upon the concomitant plan of an obligatory defalcation from the salary in proportion to private income.

If the appellation be a foolish one, the folly lies not altogether at my door. One of the words is the well-known name of an equally well-known practical sort of a thing, quite in the way of business. In England, when a candidate's zeal to serve his country has outstripped his economy, his estate comes every now and then under the hammer; and nobody then demurs to the propriety either of the thing or of the name. The other half is humbly copied from the *contribution patriotique*, the so-much-celebrated mode of supply now going on on the other side of the Channel. As to *patriotism*, the English reader will have the goodness to consider, that neither the name nor the thing are ridiculous in France.

† See Mr. Burke's speech upon the Economy Bill, Feb. 11, 1780.

‡ Ib. p. 66.

‖ See Art. 17 of Mr. Burke's charges, with Hastings's answer. The accuser seems to have forgotten his own rule: the defendant, to have remembered it much to his advantage.

all the world a scrambling for it—the few who love business, and the many who detest it; the few who understand the business, and the many who know nothing about the matter. When you see this or that man make a plunge for it, what do you learn? That he has any liking for the employment? No: but that he has no such violent aversion to it, but that his affection or necessity for the money is still stronger. When you see a man marry a woman without a penny, say he loves the woman: when you see a man marry a woman with a fortune, say he loves either the woman or the fortune. For *woman* read *office*, *commission*, *bishoprick*, *living*, where's the difference? Not a toilet or a tea-table at which a truth so obvious would not be too trite almost for utterance: a man must have learnt wisdom in an English House of Commons, or at an English Treasury Board, to be able to affect not to understand it. Even there it can be no secret, that the better liking a man has to his business, the better the business is likely to be done. What a man bids at my auction will show not only whether he likes it or no, but the precise degree of his liking, which is what nothing else can indicate.

The auction is of equal use, bidders or no bidders. If there are any, you get either the economy, or, what is worth more, a servant by whose transcendent merit the plea of economy has been put to silence. If none, you get, at any rate, the demonstration that no saving is to be made. Fortified by a testimonial in which suspicion itself could not find a flaw to fix upon, you may stand forth boldly and uprightly in the face of the people, and wash your hands for ever of the dirt of peculation.

As to encouragement, it takes away none that is not demonstrated to be unnecessary. If there are biddings, it shows that the emolument unreduced was so much more than necessary. If none, no encouragement is taken away.

It even admits of a measure of encouragement, greater than can be admitted on any other plan. Secure to the public a deduction of whatever proves to be more than necessary, you may set the rate of the salary higher than you could otherwise afford to do.

By this means an extraordinary measure of encouragement lies open to extraordinary merit: and the greater the merit, the greater may be the measure of encouragement. On the ordinary plan of a fixed salary, the utmost advantage that can be given to merit is that of having a superior chance for a reward, which, if obtained, is no greater in the hands of the most than in those of the least deserving. Here, not only the *probability* of reward rises with desert, but so may the *quantum* likewise.*

"No," says an objector, "as a means of keeping out people who do not like the business, your auction will not do. Strip your office ever so bare of emolument, a man may still take it, and hate the business of it, if it has power or dignity belonging to it, as your's has, and he is fond of power or dignity."—True: that is to say, if it *has* no business belonging to it, or, what comes to the same thing, none but what he is left equally free to do or to let alone. But will he, if the burden of office is to stick as close to him as the feather? Is there that man upon earth, that, for unprofitable power and empty dignity, would bind himself to do all day long, and every day, what he hates? For bread, a man does any thing: he heaves coals, sweeps chimnies, cleanses common sewers. Would he spend his life in the same way for the title of Lord Warden of the Collieries, Knight of the Brush, or Duke of Puddledock?

Neither Chartres nor the Duke of Wharton, it is true, could have had any rational objection to a bishoprick, though it were as barren as an apostleship: but neither the colonel nor the duke would have cared much for the lawn sleeves, if the drudgery of examinations and visitations had stuck to them, instead of being shaken off upon the chaplain and the archdeacon. From seeing a man take a bishoprick like that of Durham, for instance, you cannot I allow, form any kind of judgment whether he is fond of preaching or no, or whether he ever made a sermon in his life. All you can tell is, that he is fond of sitting with lords, and eating £14,000 a-year. But could you be under the like uncertainty with regard to such a man as Zinzendorf, for example, who, being a rich man and a count, chose, for the sake of apostleship, to become a poor man, and predecessor without a title to the now bishops of the Moravians? From seeing a man take the seals with an income not inferior to

* In Great Britain, a contested parliamentary election is a sort of *auction*, *patriotic* or *anti-patriotic*, as the reader pleases. One circumstance only is wanting, to make it exactly my auction, which is, that the money, instead of being employed in waste and all kinds of mischief, should be paid into a public fund, in ease of the burdens of the people. Taking money from the subject, or putting him into situations which force him to spend it, is what in itself gentlemen have no objection to. What makes it odious or ridiculous, is the idea of putting it to a good use. Propose to a minister in Ireland to establish a land-tax, though it were but of a shilling in the pound, or in England, to add a shilling to what there is already, you might as well propose to him to jump into the fire: for being called a tax, the money would go into the exchequer, and would save other taxes. Propose to him to lay an impost of 3s. 4d. a pound upon the income of money, in England he will look wistfully at it, and in Ireland he will adopt it: for being called, not a tax, but a regulation of the rate of interest, the produce of it is made a present of to those who gather it, which obviates every objection.

that of the episcopal palatinate, you cannot, to be sure, pronounce with any certainty whether he does or does not like the business of a judge: you cannot so much as tell whether he cares for the trouble of tossing the ecclesiastical crumbs, as they drop upon his table, to the Lazaruses that lie begging for them. He may keep causes waiting for a decree, for years by twenties and thirties at a time, and spiritual flocks without pastors in the same number, for any security that his acceptance of an office so endowed can give you of his using better diligence. The utmost you can say is, that if he hates business, his aversion to it is not so violent as his affection for the power and dignity of it, not forgetting the £14,000 a-year. But if you saw him administering justice, as Necker has been managing finance, year after year, and feeding the exchequer instead of feeding on it, would you then conceive it possible that business should be disagreeable to him? Yet in these cases, the power and dignity which are to weigh against aversion are of the brightest and heaviest metal: what would you say, if you saw equal pains taken, and with as little profit, by a country justice?

No man, however dissipated or empty-headed, need, as matters stand at present, have the smallest objection to a seat in either house: but a dissipated or empty-headed man would have very serious objections to it, if idleness and neglect of duty were not part of the privilege of parliament. Upon such terms, it is true, he need not be paid for what is called *serving:* he may even be made to pay, and does pay, up to twenty or thirty thousand pounds, for only a chance of it, though not altogether to the right fund. But my judges are not judges for show, like wooden soldiers at the court of a German prince, who cannot afford to keep live ones: they are not bishops *in partibus infidelium* or *fidelium:* they are not chancellors of Lancaster or Barataria: they are not judges in eyre, whose jurisdiction lies *in nubibus;* and who, were they of wood, instead of flesh and blood without bowels, would spare £5000 a-year to a plundered and insulted people.

But though power and dignity, with or without money, were capable of going ever so far towards reconciling a man to an employment he was naturally averse to, it would not be the less true, that the more money you give along with it, the more you weaken the evidence which his acceptance of the business affords of his liking to it, and in so far of his fitness for it. The clearer any inducement stands of all others that are capable of co-operating with it, the more clearly the amount of its influence stands displayed.*

If you are bent upon seeing your establishment filled with officers who to a man detest their duty, two principles will do as much as can well be done, where *pressing* is not thought advisable: *superfluous pay,* and *liberty of negligence.* Were you to employ the latter, and that alone, would it follow that you have done nothing? No: only that you have not done every thing. All the ingenuity of man will not prevent your getting men willing as well as able, by mischance. Even *pressing* would not prevent it altogether: for among your pressed men may be some who, if not taken in time, would have been volunteers. "But did you not insist but just now, that men of small fortunes were more likely to be fit for offices than men of large fortunes? Yet now you are contending for a plan which would give to a man of the largest fortune the best chance." I did so: but on what supposition? That the office held out equal wealth to both, and that all you knew of them was, that the one was richer than the other. True it is, that the man of slender fortune might say to his more opulent antagonist,—"Anybody will conclude me fitter for the office than you, for nobody will suppose you can have taken so much pains to qualify yourself for it as I have." But let the rich man wash his hands of all emolument, what a retort he will have to give! "Whether you have ever had any liking to the business or no, is still a problem: for, like it or not, as it has money coupled with it, and money is what you want, you would be equally glad to get it. But that I have a liking to it is indisputable: for how else should I think of taking it upon me for nothing? As to victory over temptation, all the proof you have to produce is a presumption arising from the weakness of your enemy: my victory stands demonstrated, spite of the superior strength of mine."

The plain truth between two such rivals is this: it is less likely that the man of large fortune should be fond of this or any other kind of business, than that the man of small fortune should: but where, in fact, the relish is equal, the former has in a variety of respects the advantage.

"Oh, but this is *venality*—and venality is universally and deservedly detested and proscribed." The objection takes various shapes. It shall be pursued through all of them. The short answer is—the venality you condemn, not without reason, is that which excludes the choice of the people—which gives the choice to an individual, whose interest it

* Money may serve to get the better of a repugnance, or keep up the liking, to the business of office: but the only way of giving it this effect, if there were any use in it, is to make it come in hand in hand with business: in a word, to give it, not in the shape of salary payable at distant periods, but of fees or daily pay. The emoluments of my judge take this latter shape, though, as may have been observed, for other reasons.

may be to make a bad one — and which puts the price into the pocket of the individual, not into any fund for public service. You, who detest venality, do you detest the saving of money to the people? This is but a particular mode of saving money to the people.

When a saleable office is at the disposal of an individual, and the money paid for it goes into the pocket of the individual, he will of course sell it to any one who will give most money for it: and any thought bestowed upon the fitness of the purchaser will be a mere work of supererogation. When masters in chancery had the suitors' money in their hands, and the Earl of Macclesfield, then chancellor, sold the office of master in chancery, the money of the suitors' was embezzled. Would the danger have been equal if the purchase-money, instead of being pocketed privately by the chancellor, had been to be paid publicly into the exchequer?

The strength of the objection lies in a string of phrases: — "Right of buying and right of selling go together." "From venal judgment-seats follow venal judges, venal justice." "He who buys the people, he who buys constituents, suitors, soldiers, parishioners, will sell them. He will have a plea to plead for it." A mere play upon words: clear up the confusion, the argument vanishes. What a man buys, when he buys an office, is the right of fulfilling the duties of it, not of violating them.

"But a man has paid his money, and he would not do so but upon the full assurance, and the fixed resolve, of making himself whole." Two vulgar errors in one sentence. One is, that nothing has its value with mankind but money: power, rank, consideration, nothing that you can name. Ignorance like this ought to be left to English lawyers, who build upon it their law of verbal scandal, their law of evidence, and so many other of their laws — judging of other men by themselves, and not knowing how to do justice, even to themselves. This miserable maxim has no truth even in England; can it be endurable in France?*

The other is, to suppose that a man's inclination to make money out of suitors, constituents, and so forth, is capable of receiving any sort of increase by his having *bought* them, as the phrase is, or by anything else but the facility. This is still ignorance of human nature, though ignorance on the other side. Every man will sell the people if he can sell them, and be never the worse for it: laws that go upon any other supposition are fit only for waste paper. Heroes form an exception: but folly only can look for an establishment composed of heroes. The true question turns solely upon the facility. Does a man's buying the people, as you call it, give him any facility for selling them which he would not have had if he had got them for nothing? The answer being plainly in the negative, there ends the argument. As to my judge, I make as sure of his doing all the mischief he possibly can, as if he himself had sworn it: but I defy him to do any: leaving him all the while more latitude for doing good than ever was possessed by judges.

"Oh, but," says somebody, "you are bribing the people with their own money to make a bad choice." Good, as an epigram: good for nothing, as an argument. Where the gain is personal, and the danger public; where the gain is in a man's pocket, and the danger is in the clouds; talk there of bribery if you please. When you see five guineas given to a freeholder for his vote, or a place given to a member to change his party, then talk of bribery. Here no man gets a particle of the saving, without getting his full proportion of the danger: and what he hazards is much more visible to him than what he saves. My judge, it must be remembered, sits alone: he has no colleague to set him right, any more than to encumber him. Calculate who will, how many farthings a-year it will be in the power of a rich man to save by giving himself a bad judge: I have not courage for the task. Where the balance of merit hangs even, a single farthing will be enough to turn it. Such is the utmost mischief that can happen from my bribe.

If the past and the present can afford us any prospect of the future, the chance of bidders, even for a very moderate salary, may be pronounced not inconsiderable. The legislator who sees in pre-established habits the instruments he has to work with, will lose no opportunity of putting them to their use. In France, men are in the habit of bidding, and bidding high, for dignity and power. In this line in particular, they have been used to work for nothing, if dignity and power be nothing. The scraps of jurisdiction served up by the old system, frittered down as they were, and parcelled out among dozens, scores, and even hundreds of hands, never went a begging. Confined as the market was in many instances, confined by pride and injustice to a peculiar order of citizens, there was no want of customers.

The lots I carve out are such as France has never seen before: a monarchy in justice, in place of a share in a fraction of an aristocracy: a power before which every other individual

* Let us do no man wrong. Corruption has not been in fact the fruit of this species of venality: corruption was not amongst the sins of the old magistracy. Those who have thought worst of them have never accused them of this crime. "*No*," says a generous adversary in the height of his invectives against the Parliament of Brittany, "*no hands were ever more pure than theirs.*" Discours de M. Chapelier à l'Ass. Nationale, contre le Parl. de Bretagne, 1789.

bows down: a rank assorted to that power. If no judges were ever worked so hard as mine, none were ever so well paid for their work in that bright coin which bears so high a price in France. The men I want are men of a high spirit, content to barter ease for power and dignity. Such were never wanting even under the oppressions of despotism. They will be doubly abundant under a constitution, which, levelling all arbitrary distinctions, gives a double value to all those which are founded on real service.

As opulence accumulates, bidders will multiply, and biddings will increase. What if it should at length be found, that the whole of this vast establishment can be kept up for nothing?—an establishment which now hangs so heavy on the imaginations of men in France, as without some such aid it must everywhere upon their fortunes, unless where, as in England, men are relieved from the expense of justice by being denied the benefit of it.

The committee have here also their plan of economy. What is it? Proscription.—When judges crowd upon the pension list in such a number as to be troublesome, off they are struck without further ceremony. Four thousand judges, one to every canton, were they all to be fed, would be enough to eat up the country. What is one to do with them? Sew up their mouths. What then is the hypothesis? Is it by compulsion they are to live without victuals, or by choice? Take what supposition you will, and see how this lower part of the establishment and the upper parts hang together. These four thousand, are they to be *pressed* men? Why not then press as well the five times 538,* the ten times 83,† the twenty times 30,‡ the 36,‖ and the 88,§ and make them to serve for nothing? Are they to be volunteers? Observe then your supposition. Common soldiers for this army are to be had freely and for nothing: officers, not without being paid for it.

I see the contrivance. Call a man a *justice of the peace*, and he will serve you for nothing: for in England you have a set of people who are called *justices of the peace*, and they serve for nothing. Do they?—No more than Job did. The English justice of the peace serves, it is true, without *wages:* but he does not serve without *vails:* and the committee give no vails. The vails come to a small matter, it is true, in comparison with the wages of the upper servants of justice: but in France they would be something: and even in England, some of the town ones live by them. But the real pay is yet behind.—The country justices are all gentlemen: their mess, like the member of parliament's, is all sweet without bitter, all power without obligation. What they vouchsafe to do, the country is to think itself obliged to them for: they do just as much as they like, and as they like it, and when they like it. They serve in the country when the hounds are not out, as in parliament when there is no opera. They do a world of pleasant business too, besides the drudgery of justice: they tax the country, make the roads good to their houses, and build fine buildings. But the committee's justices are men of a different stamp: they are to be servants of all work; I hope, at least, and suppose so; I am sure mine are. They are to do their duty, whenever it is their duty, and because it is their duty; not for amusement only, as Lord somebody used to make breeches.

For what purposes may money be wanting, or supposed to be wanting, to a man in public service? For *inducement*, for *education*, for *subsistence*, for *equipment*, for *dignity*, for a *preservative* against *corruption*, for a pledge of *responsibility*, for a fund of *indemnification*, and for a source of *alacrity:* for different services different articles of the above list, according to the nature of the service. All men in whom service is voluntary, must have *inducement* to undertake it. The seaman and the engineer may require *education*, the common soldier must have *subsistence*, all must be *equipped* for service; the king, the judge, and the head officer in a town or section of country, require, or at least are supposed to require, the symbols of *dignity:* every man who has the money or the fate of others at his disposal requires something of his own to *preserve* him against *corruption*, or, in the event of his sinking under the temptation, to serve as a fund for *repairing damage*, or for paying the debt of *punishment:* every man, before he can be said to have received a reward, must have received an *equivalent* or *indemnification* for any necessary *expenses* he may have been put to by reason of the service: every man to whom the enjoyment or expectation of the distinction naturally resulting from the honour of the service would not afford an adequate fund of spirits and *alacrity*, must have a bait of the lucrative kind held out to him, to make up for the deficiency. But fancy not, when you are setting up claims for public money, that you are to make a bill out, and charge a separate sum in every case for every item in this catalogue. *Education* the judge must have had already: *equipment* is included in the provision made for *dignity:* whatever sum is sufficient for the most expensive of the two objects, added to that of subsistence, will fulfil, at the same time, and that to the extent required, the

* The number of the district-courts.
† The number of the department-courts.
‡ Number of the superior-courts.
‖ In the supreme court of revision.
§ In the high national court.

further purposes of a *preservative* against *corruption* or other misbehaviour, and a fund for *reparation* and *punishment*, should any untoward accident demonstrate the insufficiency of the allowance in the capacity of a *preservative: inducement* and *alacrity* will be found him by the office, on whatever terms he thinks proper to put up for it: for who ever solicits for that, of which the acquisition promises him no pleasure?

Three circumstances comprise the outward elements of *dignity* in a judge: — *Habit, means of conveyance*, and *attendance*. Habit is the only article of which the use is confined solely to this object. Conveyance and attendance come under the head of necessary equipment. The means of conveyance are necessary to the discharge of that part of the duty which concerns the out-door business: attendance is necessary, especially on such occasions, to give immediate execution to such orders as require it, and to insure him against the accident of sudden violence. Whatever military force there is in the country, standing or occasional, can have no fitter employment, during peace, than contributing in this way by rotation to the maintenance of justice. It helps likewise to form an audience, and to fill up the measure of *publicity*. The decorations of the carriage, and of the accoutrements of the attendants, ought to be symbolical: in the expense of these decorations, added to that of the habit, consists all that is necessary or proper on the score of dignity. Whatever is thus necessary, is as necessary to one judge as to another: it ought therefore to be determined by law, and to be alike for every one. He ought not to be left at liberty to apply it to other purposes. One man might eat it; another, drink it; a third, spend it upon women. No man ought to fall short of the measure allowed: no man ought to exceed it. Ostentatious expense is no fit subject for emulation in a judge.

The dignity of a judge is not in his kitchen, nor in his cellar. Hospitality, whatever it may be in another man, is no virtue in such a magistrate. It is much nearer of kin to vice. It consumes time: it consumes money and begets wants: it begets connexions, and leads to partiality.

The use of dignity is, by impressing respect, to ensure obedience. On whom is this impression to be made? Upon the body of the people. What follows? That such exhibitions, and such alone, can contribute to this end, as are in a way to strike the senses of the multitude. The manner in which the magistrate lives within the precincts of his private dwelling-house, within the circle of his family, is nothing to the purpose: the people enter not into his house: the people mix not with his family.

The principle of the patriotic auction includes the policy of pecuniary *qualifications*. In such an office, a qualification of this sort, on the part of the officer himself, is at least desirable: either on his part, or on that of a bondsman, it is absolutely indispensable: in some degree, in the character of a preservative against corruption, but more particularly in that of a pledge of responsibility.

In the judicial office, an endowment of this sort is as necessary as in that of a member of a numerous legislative assembly it is useless, and the exaction of it impolitic and unjust. Individuals come singly under the power of the judge: under that of the legislator they seldom come but in large groups and mixed multitudes: he can neither hurt nor serve an individual whom he knows, without meting out the same measure to thousands or millions whom he does not know. The judge sees the fate of individuals lodged, according to every plan frequently, and according to mine constantly, in his single hand. The will of the legislature is nothing of itself, nor, how ill soever applied, can it have any effect, unless a multitude of other wills, sufficient to form a majority, take the same direction. In a legislature you want the rarest talents, and as much of them as you can get: the precarious security for probity, which is the utmost that any pecuniary qualification can give, is as nothing in comparison of ever so small a portion of ability not otherwise attainable. On the part of a judge, probity is indispensable, and ordinary ability may suffice.

An office like the judicial ought therefore never to be found in any hands where it has not a pecuniary qualification for company. — True: but whether it finds or brings one, makes no sort of difference, except as to the expense. The policy of qualifications, upon the ordinary plan, is linked with injustice: it establishes a monopoly, and that of the worst sort; a monopoly in favour of those who possess the greatest share of the advantages of society already, to the prejudice of those who possess the least. Necessity, and that alone, can there be the excuse. Give a salary: if it be sufficient for the purpose of a qualification, the necessity of one constituted by private income vanishes, and the monopoly remains without excuse. The patriotic auction, while it provides for the necessity, steers clear of the injustice. Giving a qualification, but only in proportion as it fails of finding one, it neither leaves the service unprovided with this security, nor excludes merit for the want of it.

As to the man of small fortune, if it lays him, or rather leaves him, under a disadvantage in one point of view, it gives him an advantage in another. The disadvantage is, that he cannot give himself quite so good a chance of getting the office as the rich man may do: the advantage is, that if he prevails

against his rich antagonist, his triumph is the more honourable. No other plan affords so illustrious an evidence of extraordinary merit: none so exact a measure. In the common way, all you can get is, a man who was preferred by such or such a majority to such another man: here you have a man who has been preferred to such an one who bid twice as much, to such another who bid thrice as much, as he could do.*

§ 7. *Rank.*

Rank is the exterior sign of power. Respect is the natural appendage of rank. Respect is necessary to power. A judge must have power over all those over whom he is judge: he ought therefore to have rank accordingly. To what end should any one possess a rank, and thence a measure of respect, superior to that of the judge, whose orders he is destined to obey? From an inconsistency of this kind no good could possibly come to pass: the natural effect of it, so far as it had any, would be to weaken the authority of the laws, and invite to disobedience the citizen thus preposterously elevated.

There can be no reason for giving precedence over the judge of a territory to the members of the administrative body of that territory. They must be subject to him, or else he is not their judge. They, it is true, may have laws to enact, or (to avoid verbal disputes) *orders* to give, to which he may have to enforce obedience. But in passing those laws, in issuing those orders, it is not their own authority that they exercise, but that of the National Assembly, by whom their acts will always be annullable at pleasure.

Were the faculty of making laws otherwise than in chief a ground for giving precedence over the judge to the members of the representative body, it would be equally a ground for putting him below every the meanest citizen. For in enforcing obedience to contracts, what is it that a judge does, but execute a law framed by the contracting parties, though assented to beforehand by the legislature?

True it is, there is no physical inconsistency in a man's being superior to another in some respects, and inferior in others: superior one moment, and inferior the next. At Rome, the two consuls used to command by turns; and every man, were there any use in it, might have his day. But where in this case is the use?

The members of an administrative body, it has been said, may be of use in quieting a tumult: the higher the rank they possess, and thence the greater the measure of respect, the better fitted they will be for rendering that important service. Doubtless: and rank and respect they ought doubtless therefore to have. But is this a reason why they ought to possess more of those requisites than the judge? To *him* they are necessary at all times: to *them* only by accident. It is on the respect paid to *him* that their own acts must depend for their execution in the first instance. Whatever respect *he* possesses, enures to *their* use. A superiority in rank on their part, with regard to him, could only tend to weaken their authority as well as his.

The rank of a judge-depute must not last longer than he continues in his station; if it did, the station would be made a ladder to useless and undeserved pre-eminence, and judges would give deputations as kings give titles and ribbands.

§ 8. *Attendance.*

Turn to political writers, *governments,* you will find, were *instituted for the benefit of the governed.* By *were,* without much adverting to the distinction, they perhaps mean *ought to be.* He who should mean otherwise, must have dreamt of history rather than read it. Put govern*ed* then, if you say *ought to be:* but if you are awake, put govern*ors* after *were.* It is in France alone, and now for the first time, that the latter proposition ceases to be true. Out of that state in which government continues to be carried on upon the principle which give it birth, France is emerging with rapid pace — Britain is not so much as thinking to emerge. Laity were made for clergy:— suitors for lawyers:— constituents for representatives:—colonists for those who lord it over the mother country:—beasts were created for the use of man. Bear these maxims in mind, and you may account with unerring confidence for whatever you see at this moment on British ground in the church, the law, the House of Commons, or the stable.

If parturition could have been bid to wait, or an hemorrhage to stop flowing, from Trinity term to Michaelmas, surgeons as well as lawyers might have had their *long vacation.* Unfortunately, the surgeon cannot say to the wounded traveller, "Lie bleeding there till my amusement is at an end, and luxury has given place to avarice." Loss of life to the patient would be loss of fee to the surgeon, and surgeons are at the call of patients all days in the year, and all hours of the day. Had laws been planned by suitors without lawyers, law would no more have sacrificed the suitor to the lawyer, than nature has sacrificed the patient to the surgeon. We have been bidden to believe, that harvest was the cause why

* It is obvious, that if the principle of the patriotic auction is applicable to any one branch of the political establishment, so may it be to any other: but in different cases the application made of it will require different modifications. I may have occasion to pursue it further elsewhere.

there is no justice in autumn: as if the time when the implements of husbandry are most wanted, were the time when the owner could best bear to be despoiled of them.

We have had in England perpetual clubs of *good fellows:* that so good a thing as good-fellowship might never cease. We have had perpetual clubs of *prayers:** that omniscience might not for a moment be kept in want of information. Is it pardonable to have imagined, in the way of vision, the equivalent of a perpetual club of judges? Something not absolutely unlike it is said to exist in the metropolis, under the name of the Rotation-office. But these are magistrates, who, in contradistinction to those who get more by the trade, are styled *trading justices:* and a thief will not always wait, as honest men may be made to do.

It is a bitter office thus perpetually to be upbraiding trustees with being trust-breakers, Englishmen with being Englishmen, and mankind with being men: it is worse than a thankless — when will it cease to be a fruitless one? †

What non-residence is in the *church*, non-attendance is in the *house*. Those who wish to keep the one or the other on their present footing, will speak, or write, or preach against the grievance, commend the wholesome laws which the wisdom of ages has provided against it, and lament that virtue cannot be found to execute them. Those, should such peradventure arise in any future age, who entertain a real wish that the abuse should cease, will vote for this sure and simple method of rendering it impossible.‡ It has all the effect of a fine for non-attendance, without the apparent hardship, or the parade and trouble and expense, and odium, and uncertainty of prosecution. This most simple of regulations would of itself be sufficient to regenerate the house. Two classes only would remain: those who understood the business, and those who wished to understand it. No horse-racer, cock-fighter, hazard-player, fox-hunter, no empty lordling, no law-harpy in full feather, no lounger or man of gallantry, would find it worth his while to sit there; no merchant or banker would find it good husbandry to pay so much of his time to save the expense of correspondence.

The difference in point of strictness between the obligation of attendance on the part of the judge of an immediate court, and that on the part of the judge of appeal, will render the latter station a retreat from the laborious functions of the former, and a suitable reward for the due discharge of them.

What makes the jurisdiction of appeal naturally so much less burthensome than the other, is not so much any positive difference that may be thought proper to be made in the number of the vacation days, as the natural exemption from out-door business, and from sudden calls. As nothing can come before them that cannot wait, and that has not already waited, they may have fixed days and hours for business; and as often as the paper is exhausted of business, they will be at liberty till it receives a recruit.

§ 9. *Electioneering forbidden.*

The reason for suspending in judges the privilege of *active* citizens, is obvious enough: it is to guard their probity, and reputation for probity, from a most fertile source of danger. Mention not *disgrace:* nothing can be a disgrace that is not meant to be so: an incapacitation, the result of power and dignity, carries more of honour with it than disgrace: it is the ostracism of the Athenians, without any of the hardship or the iniquity.

In England, the twelve superior judges are indebted in no small degree for their unsullied reputation to the implicit obedience they have the good sense to pay to this precept of Pythagoras; as the breach of it is one of the most fertile sources of complaint against the country magistrates, who, being gentlemen at large, accept of a part of the rights of their fellow-citizens to dispose of, as gentlemen accept of seats in the House of Commons, to fill up a vacant hour now and then, or serve a friend.

* A Mr. Nicholas Farrer stands recorded, in the Gentleman's Magazine and elsewhere, as the pious founder of a club of this sort upon the pure principle of protestantism, and without any popish views. Providence has not been so careful of this as of less laborious colleges.

† It would take a volume to give a catalogue of all the modes in which the denial of justice has been worked up by this cause in England to the pitch at which it stands. Nothing could be better imagined for this purpose, than the want of local judicatures, combined with enormous taxes, and the artificial necessity of enormous fees. Small portions of time will serve for collecting as much money as the people can afford to give, in such large masses in which alone the profession will stoop to take it.

The Welsh judges, eight in number, have from £550 to £930 a-year salary, besides fees to an amount unknown, for twice two months service, staying about a week in a place, and pitying, with generous concern, the lawless barbarism of those distant provinces. Mr. Burke, looking over the establishment, and seeing these men sitting idle for eight months out of the twelve, seems to have taken them for thieves, and to have conceived an honest wish for ridding the country of the greater part of them (Speech on the Economy Bill:) but there would be work enough for them all, if they were but made to do it, and the entrance into the courts were not barred by oppressive taxes, and a still more oppressive system of procedure.

‡ Daily payment nowhere but on the spot; or, where there is no salary, daily return of a proportionable part of a deposit exacted for that purpose. See p. 356.

§ 10. *Pluralities forbidden.*

Two reasons, either of them conclusive, forbid the joining any other office to that of judge; or any one judicial office to another:

1. *Want of time.* The abjuration of all other public business, is the necessary consequence of the inviolable obligation to attendance. Occupied or no in the actual service of justice, the judge ought to be every moment in readiness to obey her call. If he has anything else to do but sit in judgment, suitors must inevitably be exposed to wait for justice. If judges in general have any considerable part of their time to spare for other business, it is a sign that the judicial territories are too small, that they are more numerous than they need be, and the whole establishment more expensive.

2. *Danger to probity, and reputation of probity.* All offices are sources of connexion: connexions are sources of partiality; generally of actual partiality, always of suspicion of partiality, which is to reputation of probity what actual partiality is to probity itself.

To these may be added:

3. *Injustice and impolicy of monopoly.* The supremacy of *security* remaining inviolate, *equality* ought here, as elsewhere, to be the ruling principle. Pluralities, accumulating in few hands the objects of general desire, deprive so many individuals of a portion of enjoyment, and the public of so many lots of reward applicable to the encouragement of public merit. Three such prizes, thrown into the lap of one unjustly-favoured individual, do not produce three times the enjoyment that one of them would have produced, nor, consequently, a sum of enjoyment equal to what they would have produced if distributed among three.

Above all things, a judge chosen by the people ought not to be at liberty to accept an office from any other hands, and least of all from those of the crown. In such a case, an office is a bribe.*

It is not under the patronage of the people that pluralities are either so dangerous, or so likely to be abundant, though law were not in the way. Despotism, monarchial or aristocratical, and its attendant, favouritism, are the natural parents of this and kindred abuses. Create a people for the use of their trustees, pluralities and sinecures and non-residence are natural and justifiable. Appoint trustees for the service of the people, the English and the French for *plurality*, and *sinecure* and *non-residence* is *fraud* and *monopoly*, and *breach of trust* and *peculation.*

In some instances, if I mis-recollect not, the National Assembly seems to have been betrayed into a disposition to tolerate pluralities, even where one of the offices is that of judge. When two offices are allowed to be holden together, one of which is sufficient to fill up a man's time, the law should explain itself, and declare which of the two duties it means to have neglected.

"Would you then exclude all judges from all prospect of a seat in the sovereign legislature?" No, certainly. For legislation there cannot be a better probation, nor a better nursery, than judicature. In legislation, transcendent genius is too important and too rare to permit the excluding the smallest chance for it. But the principle of deputation affords an obvious compromise. Let the office and salary of a judge, thus distinguished, be preserved to him, so long as he continues in the exercise of the superior function, under the condition of providing a deputy extraordinary to supply his place.

In England, this and a thousand other difficulties are got rid of by a very simple principle. Power without obligation being the condition of parliamentary service, a seat in parliament is no burden in any shape, nor creates any demand upon a man for his time. A judge may be a member of parliament for the same reason that a horse might be so. Accordingly, the chancellor's subordinate, the master of the rolls, the eight Welsh judges, and the masters in chancery, may all of them have, and commonly have many of them, seats in the House of Commons. In English law, if you have an exception to a bad rule, it is not for any good reason, but for a reason as irrational as the rule. The twelve judges are shut out of the House of Commons:—Why? because a man cannot serve in two places at a time? No: but because they are wanted to sit cooling their heels, without opening their mouths, in the House of Lords. The same reason should shut out the masters in chancery: but Chaos has granted them a dispensation. The same reason should shut out the king's men among the mercenary lawyers: but they are wanted in the House of Commons as counsel for the minister: to be judges and parties; to sit in judgment as members, over their own conduct as king's lawyers; to prevent the amendment of the law; and to sell their constituents, whom they pay, to the crown, by whom they are paid.

Exceptions were taken when a horse was consul; there could be none against his being a lord. It is beyond comparison better

* *Sudder-Adawlut*, could one but find the English of it, might save a page. But where? —It is not in Johnson or in Jacob. In Hebrew some have rendered it *Aceldama*. And is the House of Commons, too, to be an Aceldama?

Two advocates formed part of the household of an earl of Northumberland in the sixteenth century. Why not? Compared with indiscriminate prostitution, concubinage is chastity. To a link-boy or a street shoe-black, a livery is a coat of honour. What should we say, were we to see the livery of a duke upon the back of a judge?

that a horse should have a voice in that house, than that a judge should. A horse-lord, present or absent, would be as capable of doing duty in the house as another lord, when attending at the opera or the gaming-table, or making the grand tour. A horse-lord, under the switch of the king's riding-master, would be as capable of giving a proxy, as another lord under the wand of the king's chamberlain. Neighing in that house would not make a horse the worse for riding; but sitting and voting there makes a judge very much the worse for judging. If a horse contracted partialities, he would not trot the worse for it: when a judge exposes himself to similar suspicions, he judges very much the worse, or is thought to do so, which comes exactly to the same thing. Custom, which sanctifies all absurdities, custom alone could reconcile men to the sight of a man holding at the same time a place in the court appealed from, and another in the court appealed to; judging under one name what he has been doing under another. The plea is, that he may be there to defend his decrees: as if a man could not be heard as a defendant, without voting as a judge. Who is there that does not remember when the nation was kept for years in a ferment, justice become odious, good judicature traduced, and bad judicature painted worse, because a great man, who had one foot on the bench, had another in the house, and was delivering, sometimes in the one place, sometimes in another, doctrines supposed to have been learnt in the king's bedchamber? By degrees it is settled into a rule, that not only the chancellor shall have a peerage, but that the same feather shall be stuck into the caps of the two chiefs in the courts of King's Bench and Common Pleas. Ere long it will get down to the Exchequer, that Westminster-hall may not contain a single bench undefiled by politics. When you have put your judge into the house, the greatest eulogium you can bestow upon him is, that he might as well be anywhere else, for anything that he does there. You plunge him head over ears into temptation, and your hope is, that he will not be soiled by it. If this be wisdom, put your daughter to board in Drury-Lane to teach her chastity. Why, then, this incongruity? Because, such is the presumption of the trader in mercenary justice, such the ascendant of talents, strengthened by wayward industry, over faculties debilitated by hereditary idleness, and such the dominion which lawyer-craft has planted in the ignorance and prejudices of public men, that the highest seat in judicature is too low for him: nor will he stoop to sit in it, unless bribed by a second and still higher station, which can have no other effect than that of unfitting him for the first.

The Hales, the Holts, and the Raymonds, received no such extraordinary rewards beforehand for ordinary service that was to follow. But is not possible service as good a title to the first honours, as actual wealth without pretence of service? Is partial abuse worth mentioning, in a distinction which has abuse for its sole substance and primeval essence?

But it is to the Chancery-bench you must look, if you would behold a monster, in comparison of which the chimera of the poets was an ordinary beast, their triple-bodied Geryon an ordinary man:—

1. A single judge, controuling in civil matters the several jurisdictions of the twelve great judges.

2. A necessary member of the cabinet, the chief and most constant adviser of the king in all matters of law.

3. The perpetual president of the highest of the two houses of legislature.

4. The absolute proprietor of a prodigious mass of ecclesiastical patronage.

5. The competitor of the minister for almost the whole patronage of the law.

6. The keeper of the great seal; a transcendent, multifarious, and indefinable office.

7. The possessor of a multitude of heterogeneous scraps of power, too various to be enumerated.

All these discordant bodies you see inclosed in one robe, that every one may corrupt another, if it be possible, and that the due discharge of the functions of any one of them may be impossible. Such is the care and providence of chaos.

§ 11. *Oath of Office.*

Promissory oaths, if properly applied, are capable of being made a very useful supplement to penal laws. The oath of office in the text, will, I hope, be found an example of such an application. But so delicate and sacred an instrument of government ought to be guarded from profanation, and husbanded with the utmost care. To this purpose, the following rules seem proper to be observed:—

1. It should not be employed where the ordinary provisions of the law, with its attendant sanctions, would answer the purpose of themselves: which is the case wherever the offence they create is such as admits of specific evidence sufficient for legal conviction, and not more than ordinarily difficult to obtain. For in such cases an oath is *needless.**

* The statute-book of the principal of the two arch-seminaries of virtue, knowledge, and religion in England, is, from beginning to end, one continued violation of this rule. It is stuck full of penalties, from twenty-shilling down to sixpenny, fourpenny, and twopenny ones; and lest the paradise it creates should in one luckless hour be lost by a single instance of disobedience,

2. It should not be employed in sanctioning ordinances of a light and unimportant nature. For in such cases it is *useless:** and more harm is done by the discredit thrown on the sanction, than good by the strength given to the law.

3. It should not be employed in sanctioning ordinances which must unavoidably be infringed. For in such cases it is to a certain degree necessarily *inefficacious:* and its inefficiency exposes it to contempt.†

4. Above all things, it should not be employed in sanctioning ordinances of such a nature as to be liable to be constantly and universally broken, without a possibility of detection. For here it is *inefficacious* in the extreme.

Such is the case in all instances where the use made of the oath is to ensure the veracity of a declaration of opinion. The duty prescribed is the entertaining of a certain opinion: the delinquency by which the oath is broken, is the not entertaining of that opinion, or, at any rate, the entertaining of one repugnant to it. Of this species of delinquency, if such it is to be styled, it is evident that, confining itself, as it does, to the breast which gave it birth, it may subsist in the fullest degree, without leaving on any part of the exterior demeanour, any marks which can afford the smallest handle to accusation, or even so much as to suspicion.‡

5. As to the *wording* of it, it should not confine itself to declarations of so *general* a nature as to be *nugatory;* such as, for example, a simple promise of general good behaviour, unaccompanied with any assurance of a specific nature. For in this way, too, it is rendered *inefficacious*, and by its inefficacy contemptible.‖

The *use*, then, of a promissory oath, and in particular of an oath of office, appears to be the employing the joint force of the religious and moral sanctions, or, at any rate, of one of them, in aid of the political. And the *instances* in which it may with *propriety* be called in and applied, are those where, the injunction not being frivolous, nor infringement necessarily frequent, nor the ordinary penal sanction of itself sufficient to the purpose, a violation of the duty thus sanctioned may be capable of being ascertained by evidence, which, though not sufficient to ground a judicial conviction, may yet be sufficient to draw on the delinquent a censure more or less determinate on the part of the tribunal

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it applies to every clause, without exception, the tremendous sanction of an oath, that delinquency in matters of such moment may be impossible.

* The code just referred to may vie in levity of contents with the most eminent receptacles of monastic beatitude.

† The same code teems with articles that are so many infringements of this rule. It may be questioned, whether there be that man living who ever spent a week in that seminary of piety and orthodoxy without committing numerous violations of those consecrated ordinances, and consequently without incurring in so many instances the guilt of what is there, in express terms, called *perjury*.

‡ Subscriptions to articles of faith are among the most flagrant examples of this mode of misapplication. In this most exquisite contrivance is comprised everything that can recommend it to the head and to the heart of senseless tyranny: the object useless, the means flagitious, and the accomplishment impossible. The pious hope that perjury may conduct the heretic to eternal tortures is the only expectation that wears the faintest colours of a reasonable one.

The author of the code just mentioned has taken care to exact from his subjects this proof of their belief in a set of articles, by which the dreams of a parcel of churchmen in 1563 are fixed as the *ne plus ultra* of English wisdom in matters of religion to the end of time. In this farrago, worthy in every respect of the age which gave it birth, the flower of the English youth are made to profess belief, before it is pretended they can entertain it, that they may ever after be obliged to pretend it, because they have professed it. Sincerity and discernment, the two qualities the most odious, and the most justly so, to a domineering, an over-fed, a lazy, a corrupted, a corrupting, and, in the most palpable points, an anti-christian priesthood, are thus nipped in the bud, and the minds of the rising race of legislators emasculated, poisoned, and fashioned from infancy to their yoke.

The official oaths, which may be seen scattered in such abundance on the face of English statute law, look, all of them, as far as recollection serves me, as if stamped upon this model. You would swear them penned, every one of them, by the same old woman in her dotage. I speak of the productions of modern time: for, in this line, intelligence seems to have been not stationary, but retrograde. In a book of oaths printed in 1649, I find, in many instances, clauses of a specific nature, which show, that in those days the perfection of imbecility and insensibility were not as yet by any means attained.

A collection of the instances in which this so much vaunted sanction is universally and notoriously trodden under foot before the eyes of an assisting priesthood, a contented magistracy, and a passive legislature, would be a work not without curiosity, though, in times like the present, of more curiosity than use.

‖ The oath prescribed by a statute of Geo. II. (2 Geo. II. ch. 23) to be taken by attorneys on admission, runs in these words: "*I A. B. do swear that I will truly and honestly demean myself in the practice of an attorney, according to the best of my knowledge and ability. So help me God.*"

The attorney who penned that oath ought to have been hanged for a traitor to mankind. He had a receipt in his pocket for making the whole race virtuous; and out of pure spite, for it could be nothing else, refused to give them the benefit of it. For *attorney* he had but to put *human creature*, and the business would have been done. All traders grasp at monopoly. But it was reserved for attorneys to give themselves the monopoly of "*truth*" and "*honesty*."

of opinion. And to this purpose it will be the better *adapted*, the more specific and pointed it is in the description it gives of the demeanour which it endeavours to ensure or to prevent; and the more difficult it consequently renders it to delinquency to screen itself from the public eye.

Binding, restraining, are not the only effects which may be derived from an engagement of this nature. Under the semblance of coercion, it may be made to cover real liberty; and the probity of public men may find shelter under it against the tyranny of private influence. Set its efficacy at the lowest rate, an oath is a most comfortable shield against all importunity which is not in alliance with a man's own inclination. *My heart is with you*, he may say, *but the oath I have taken ties my hands*. But he will not be called upon to say so: he will not be put to the expense of any such insincerity. What every one sees cannot be granted, is not asked. You cannot say to a man, *Good Sir, perjure yourself to oblige me:* no, not even to one who, for ends of his own, you are sure would perjure himself without remorse: the bare proposition would be an insult: still less can you complain of him for not having done so of his own accord.

This use of an oath is of no light importance. Self is but one: connexions are infinite. The danger which the probity of a public man is exposed to from the suggestions of his own immediate interest, is trifling in comparison with the attacks it has to sustain from the interests of all sorts which surround him. Amongst these, local and professional interests are particularly dangerous: individual ones venture not beyond a whisper: the others, by their clamour, counterfeit the public voice, and clothe themselves impudently in the garb of virtue. Strengthened by secret inclination, and entrenched behind the rampart of an oath, probity may bid defiance to all its adversaries.

This same principle of liberty, under the semblance of constraint, may be applied to the other branches of public duty, not less to the relief of the individual, than to the advantage of the service. In parliament, for example, what more common than to do the devil's work, not by choice, but by necessity; and, in bitterness of heart, to serve at the expense of the public the little tyrant whom you hate?*

As to what may be called the *sanctionative* part of it, an oath should be such as men of all persuasions in matters of religion may take without belying their principles. Whom is it to bind? Everybody. What ties, then, should it employ? What but such as every body will be bound by. If one tie is not sufficient, what follows? That it should add another. Even under the darkness of English bigotry, this precaution is not altogether unobserved. Jews are sworn upon the Old Testament, Mahometans upon the Koran, Hindoos upon the book which passes among that people for the repository of religious truth. If a man has religion, bind him, whatever it be, by his religion: but if he has none, is he for that reason to go free? Common sense, were that consulted, would pronounce the contrary: the fewer the ties that can take hold of him, the greater the need of making the utmost of those few. The rebel to religion may still bear allegiance to the laws of honour; to those laws, to which every thinking man, in proportion as he deserves that title, will ever pay obedience.

Of all things, therefore, an oath ought not to involve in its texture, explicitly or implicitly, a religious creed: not so much as a declaration of theism. Why? Because it ought not to force a man to add immorality to irreligion: it ought not, by exposing a man to the reproach of insincerity, to give him an interest in propagating the notion of its being frivolous and unobligatory, and force him thus to make war upon its credit in order to save his own.

"What! athiests then?—would you let in athiests into your establishment?" I answer—that is not the question. The question is not, whether such an exclusion would be desirable, but whether it ought to be endeavoured at by such means. It is the property of tests, not to exclude anybody from the trust, but such whom the very exclusion demonstrates to be peculiarly worthy of admittance. The dilemma is insuperable. Take at once the case of the athiest as the strongest. If he swallows your test, it fails of its end by the supposition: if he refuses it, he proves, by the very refusal, that an athiest, instead of being inferior to believers in the article of probity, is superior. It proves him in particular to be superior in that point to a Church-of-England clergy. What churchman of that denomination can pretend to stick at perjury? He is trained up to it from a child: he sucks it in with the milk of his *alma mater:* it is meat and drink to him.†

* Read Mr. Burke's Letters and Speeches to the electors of Bristol, and see all the powers of eloquence exhausted, and, as the event seems to have shown, in vain, in defending a public man against the imputation of preferring the real interest of the British empire and of mankind to the imaginary interests and real prejudices of a few leading men in that one town. An oath, if penned with proper skill and attention, might give parliamentary virtue its perpetual quietus from such distressing and degrading difficulties.

† I shudder at the very possibility of doing an injustice: trifling as injustice may appear to some eyes in such an instance. Oxford includes but half the church, though that not the least con-

Does the stomach of an athiest revolt at such a potion? It cannot, without manifesting a degree of sensibility unknown to the whole English hierarchy. What more indisputable proof can be given of the purest virtue, than the abstaining from delinquency, where temptation is violent and discovery impossible? Is a man to be heard who should pretend to apprehend mischief to society from such a character? — and more, too, than from one that knows no such scruples? Will it be assumed, that athiests will in general take the test and enter, instead of refusing it and being shut out? Then the equally general effect of such a test on men of that description will be to produce perjury, instead of the effect it aims at. Which is the worst character, a conscientious athiest, or a perjured churchman, it is needless to dispute: thus much may be affirmed without much fear of contradiction, that a perjured athiest is worse than an unperjured one.

The wording of this sanctionative part is also material in another point of view. According to the language employed, the declaration may be more or less solemn and *intense*. It may import a greater or less measure of attention to the subject, of confidence in the truth of what is uttered, of sensibility to the importance of truth in that instance, and of the guilt and danger of a departure from it. As the importance of the occasion admits of various degrees, so may the solemnity of the oath; that extraordinary resources may not be lavished upon ordinary objects, nor instruments, of which the efficiency depends so much upon the opinion of their sanctity, be profaned by a too frequent use. But to sift this part of the subject to the bottom, would lead us to too great a distance.

But the greater the measure of strength which, by proper management, may be given to the moral as well as the religious part of this complex tie, the greater ought to be the care taken not to overstrain it, nor apply it to any improper use. Above all things, it ought never to be employed to force conscience: never but in concert with conscience, and in subservience to her dictates. It ought never to be employed where there can be the least doubt, whether a man looks upon that to be right which it requires him to do: much less when it is certain he thinks it wrong It can there only be made use of with propriety, where it is employed to strengthen conscience against temptation, and to render his acting in the manner which he himself believes to be right, more sure.

Compare to these several rules the example given in the text: particular application would double the length of a section already but too long.

siderable. In Cambridge, whether statutes are sworn to, or, if sworn to, habitually broken, not having the means of certainty in my hands, I stay not to inquire. But the distinction, if there be any, is of mighty little consequence. In such a case, delinquency and connivance are scarce worth distinguishing. Who ever heard of any attempt, on the part of either university, to distinguish itself in this point from the other? Who ever heard of any uneasiness expressed by a Cambridge bishop, as such, at the apprenticeship served to impiety by an Oxford one?

CHAPTER VI.

Tit. IV. — Of Pursuer-Generals.

Art. I. — [a] The functions of a pursuer-general of an immediate court, shall be, in civil matters,—

1. To reclaim the execution of all laws in the execution of which no individual has any special interest, and of those in the execution of which the nation has a special interest of its own, superadded to that of individuals.

2. [a] To act on behalf of the king in his individual capacity, as well in the character of defendant as that of plaintiff.

3. To act on behalf of every [*plaintiff*[b]] who, through poverty and want of friends, is unable to engage any other advocate.

4. To obviate any prejudice he sees likely to result to justice, from any oversight or unskilfulness on the part of a [*plaintiff*[b]] who pleads his own cause, or on the part of his advocate, gratuitous or professional.

Art. II. — In penal matters,—

1. To superintend the proceedings of every private prosecutor; to assist him, in case of oversight or unskilfulness; and to watch over him, and prevent remissness or collusion with the defendant.

2. To reclaim the execution of all penal laws, by performing the functions of prosecutor where no private prosecutor is received in preference; and in the cases, if any, where individuals are not admitted to prosecute.

Art. III. — In cases where the administrative body of a territory for which he serves, is empowered to act in the character of pursuer by the hands of its procurator-syndic, and the pursuer-general is not engaged by his office on the other side, he has concurrent authority with such procurator-syndic, each cause belonging to that one of them who is first seized of it. But, to prevent collusion or remissness, each of them has a right to receive communication of all such business carried on by the other.

Art. IV. — Where a [*pursuer* [b]] whose interests a [*pursuer-general* [c]] has espoused, happens to [be made *defendant* [d]] in a cross cause, growing out of that in which he was

[a] Def. G. Omit this paragraph.
[b] Def. G. Defendant.
[c] Def. G. Defender-General.
[d] Def. G. become Pursuer.

[*pursuer*,[b]] the [*pursuer-general*[c]] and not the [*defender-general*[e]] shall take in charge the interests of such party in such derivative cause.

Art. V. — In a court of appeal, the client of the [*pursuer-general*[c]] shall be the party who was the client of the [*pursuer-general*[c]] of the immediate court in the original cause.

Art. VI. — *Clauses in the oath of office to be taken by pursuers-general, in the room of Clause I. in the oath appointed to be taken by judges:* —

1. That I will, at all times, be vigilant in looking out for, forward in entering upon, and faithful in executing, all such business as the law has given me in charge: not suffering myself to be turned aside from the pursuit or the performance of it, by indolence or by interest, by hope or by fear, by affection or by enmity towards any individual, or class of men, or party in the state.

Art. VII. — 2. That in my zeal on behalf of the cause I have in charge, I will not seek to serve it at the expense of truth or justice. I will not use any endeavours to cause to be received as true, any fact which I do not believe to be true, nor as just, any conclusion which I do not believe to be just; nor my persuasion of the truth of any fact, or the justice of any conclusion, as stronger than it really is: nor will I seek to put upon the conduct of any man, any colouring other than what I believe to be true: nor will I exercise partiality in favour of the party whose interest I espouse, any otherwise than by doing such acts as justice requires to be done, and giving such counsel as justice requires to be given, on his behalf, and by applying my faculties to the discovering and presenting of such considerations as make in favour of his cause, in preference to such as make against it.

⁂ For the other provisions relative to pursuer-generals, see Tit. III. *Of Judges.*

CHAPTER VII.

TIT. V. — OF DEFENDER-GENERALS.

Art. I. — The functions of a defender-general of an immediate court shall be, in matters civil as well as penal, —

1. To act on behalf of every defendant, who, through poverty and want of friends, is unable to engage any other advocate.

2. To obviate any prejudice he sees likely to result to justice, from any oversight or unskilfulness on the part of a defendant who pleads his own cause, or on the part of his private advocate, gratuitous or professional.

Art. II. — To act on behalf of the administrative body of the territory for which he serves, in cases where the pursuer-general is engaged on the other side: but this in concurrence with the procurator-syndic of that body, in the same manner as the pursuer-general would have had to act.

⁂ For the other provisions relative to defender-generals, see Tit. III. *Of Judges*, and Tit. IV. *Of Pursuer-Generals.*

CHAPTER VIII.

TIT. VI. — OF VOLUNTARY PROSECUTORS.

Art. I. — For any offence not specially excepted, any man not specially inhibited may be admitted to prosecute: giving competent security against collusion, litigious vexation, and calumny.

Art. II. — But no man, other than the pursuer-general, is bound to take upon him this duty, and any man may call upon the pursuer-general to take it off his hands.

Art. III. — In the following cases, the judge, upon the petition of an individual, may admit him to prosecute in preference to the pursuer-general, if he thinks the purposes of justice will be better served by such preference, declaring that such is his opinion, and for what reasons: —

1. Where the pursuer-general, in virtue of some connexion or otherwise, stands exposed to a suspicion of collusion with the defendant.

2. Where the prosecution seems likely to be of an intricate nature, and to require more time than it may be in the power of the pursuer-general to devote to it, without prejudice to his duty in respect of other business.

3. Where the person offering himself as prosecutor has a special interest, whether lucrative or vindictive: as in case of theft, defraudment, malicious destruction or endamagement, robbery, and other private offences raised to the rank of public ones: so also in case of perjury, to the prejudice of an individual.

4. Where a reward is provided, which, in proportion to the circumstances of the voluntary prosecutor, is considerable, and he, wishing for his own security to have the conduct of the prosecution in his own hands, can show a probability of its being terminated more speedily, or with the better chance of success in his hands than in those of the pursuer-general.

Art. IV. — But no delay shall be granted for the purpose of inquiring into the relative fitness of such voluntary prosecutor: and rather than any delay shall ensue, the function shall be assigned provisionally to the pursuer-general.

Art. V. — No person shall be received definitively in the character of voluntary pro-

[b] DEF. G. Defendant.
[c] DEF. G. Defender-General.
[e] DEF. G. Pursuer-General.

secutor, till after hearing what, if any thing, can be urged against his admission on the part of the pursuer-general.

Art. VI. — Failing the voluntary prosecutor by death, absence, unnecessary delay, rejection for collusion or other misbehaviour, or dismission at his own request, the charge of the prosecution devolves on the pursuer-general of course.

Art. VII. — On notice given to the pursuer-general, a voluntary prosecutor may at any time be relieved from his duty by leave of the judge, which shall not be refused without special cause.

Art. VIII. — Among divers persons offering themselves in concurrence to undertake the charge of voluntary prosecutor, the judge, after hearing the pursuer-general, shall choose that one who in his judgment appears the fittest; superiority of interest, ability pecuniary and intellectual, and moral character, all being taken into the account: but rather than delay should ensue, the charge shall be provisionally committed to the pursuer-general, as by Art. IV.

Art. IX. — A voluntary prosecutor may at any time, by a written instrument, or by oral appointment made in court, depute any one person to act in his stead; the principal remaining answerable for such deputy, until such deputation be revoked, which it may be at any time.

Art. X. — So may he associate with him, on the like terms, any person or persons as colleagues, with leave of the court, and not otherwise: and the act of any one such co-prosecutor shall bind the rest.

Art. XI. — A voluntary prosecutor shall be reimbursed, at the public expense, such part of his costs as would have been incurred had the prosecution remained in the hands of the pursuer-general: and this even in case of acquittal, unless refused on the ground of calumny, temerity, vexation, or other special cause.

Art. XII. — *Honorary* rewards shall be provided, which a voluntary prosecutor shall be at liberty to receive, instead of any pecuniary rewards proffered by the law.

Art. XIII. — Where a voluntary prosecutor accepts an honorary reward in lieu of a pecuniary one, he shall besides be reimbursed his costs actually out of pocket: yet so that the difference between such costs and the taxed costs, added to the pecuniary value of the honorary reward, shall not exceed the amount of such pecuniary reward.

Art. XIV. — Where no honorary reward is provided, should the voluntary prosecutor release his right to the whole or any part of the pecuniary reward, such release shall not be deemed to extend to the difference between costs out of pocket and taxed costs.

Art. XV. — It lies upon the pursuer-general to watch and take care that there be no collusion between the defendant and a voluntary prosecutor, nor any undue favour shown by the latter to the former.

Art. XVI. — It lies upon the judge to watch and take care that there be no collusion or undue favour between the defendant and the pursuer-general, with or without a voluntary prosecutor.

Art. XVII. — To prevent collusion, and that each may, as occasion requires, be as a check or as a spur to the other, where the charge of prosecution is adjudged to the pursuer-general, in preference to an individual who otherwise might have been admitted as voluntary prosecutor, communication of proceedings and inspection of documents shall be given to such individual, and *vice versa* to the pursuer-general.

Art. XVIII. — Any person may, with leave of the court, put at any time to the pursuer-general, or other prosecutor, any questions tending to ascertain whether collusion or undue favour has not taken, or is not intended to take place; nor shall such leave be refused, unless for special cause; such as evil conscience on the part of the questioner, accompanied with an intention of calumny, vexation, or mischievous delay.

Art. XIX. — It lies upon the judge to be on his guard against any intention, on the part of a voluntary prosecutor, to give up the reward, without leave of the court, to the defendant: in which view, a promise not to do so may be exacted upon oath: and in case of necessity, the whole, or any part of such reward, may be stopped for the benefit of the public treasury.

Art. XX. — It is a ground for suspicion of undue favour or collusion, if the voluntary prosecutor, or person applying to be received in that character, is connected with the defendant in the way of interest, consanguinity, affinity, or intimate acquaintance. But no such connexion ought to be received of itself as conclusive evidence: since the cause may often subsist, without being attended with any such effect.

Art. XXI. — No person shall be admitted to take upon him the charge of voluntary prosecutor, until he has taken the following oath: —

I, V. P. being about to be admitted voluntary prosecutor in this cause, do solemnly promise and swear — That during my continuance in this trust, I will employ the utmost of my endeavours, and use the utmost expedition in my power, by all lawful means to bring the defendant to justice: not suffering myself to be turned aside from the performance of this my duty, by indolence or by interest, by hope or by fear, by affection or by enmity, towards any person or persons whatsoever. I will not, without the leave of the

court, show him any favour tending to exempt him from the whole or any part of the punishment which he may be deemed to have incurred, much less consult and collude with him to any such purpose: [nor will I, during the time prescribed for secresy, communicate to him, directly or indirectly, but on the contrary will, to the best of my power, keep concealed from him, and from every one through whose knowledge he might derive advantage, any particulars which the law requires to be kept secret from the defendant in such a cause.]

Art. XXII. — Information of any offence, or of any ground for suspecting the commission of any offence, shall not be received, either by the judge or by the pursuer-general, but upon oath.

Art. XXIII. — Any information so given, may be given in secret; and the pursuer-general, upon requisition made to him by the informer, shall bind himself by oath, not to make known the informer, unless and until, in due form of law, authorised so to do.

Art. XXIV. — At the conclusion of the suit, or at any prior stage, the judge, upon requisition made on the part of the defendant, is bound, if he sees probable ground for an action for rash or malicious prosecution, to order the pursuer-general to make known the informer for that purpose.

Art. XXV. — Any pecuniary reward offered by or according to law, may be paid in the whole, or in any part, to the informer, without his being known, upon application made by the pursuer-general, or any other person, in such informer's behalf. It shall be paid to the pursuer-general for his use, and by the pursuer-general to him or to his order, he giving a receipt for it in the secret register-book: and every such sum shall be comprised in the pursuer-general's periodical account, to be rendered upon oath.

Art. XXVI. — A prosecutor or informer may be punished as for rash or malicious prosecution or information, without any separate action instituted for that purpose, and upon the mere evidence presented in the course of the prosecution itself: unless, having further defence to make, he requires that a separate action should be instituted for that purpose, in which case the proceedings in the original cause shall stand as evidence in such cross cause.

OBSERVATIONS ON TITLES IV. V. & VI.

§ 1. *Similarity, in point of Reason, between the Provisions relative to the three Lines.*

Regulations fit for the office of judge being *given*, so are they for that of pursuer-general: so are they again for that of defender-general: a few slight differences, such as those which have been seen, compose the only exceptions which a minute examination suggested to my view. The substance of the titles being so far the same, so far might be, so far therefore ought to be, the words: *eadem natura, eadem nomenclatura*, is a rule that in legislative composition ought never to be departed from: facility, brevity, precision, and certainty, are equally and jointly served by it.

But the *provisions* which the reader has seen, were determined by the *reasons* which he has also seen. To be satisfied that, under the exceptions just mentioned, the provisions referred in the first instance to the judicial office, are applicable, with a degree of advantage more or less considerable, to the two other offices, a reader, should any one think it worth his while, has but to go over the observations contained under the preceding title twice more, considering them successively in those two further points of view. Where the particular reason failed, the general advantage of uniformity was always found sufficient to turn the scale on that side, no particular reason being discoverable in the opposite scale.

§ 2. *Reasons for keeping the three Lines separate.*

Various reasons plead against mixing the lines, so as to suffer a man to seek promotion in a line different from that he has once embarked in. As for any advantages that would result from such an intermixture, I can find none.

I. General reasons applicable to all the lines:—

1. *Each class makes the better check upon the two others.* From diversity of occupation may naturally be expected a certain diversity of character: for in what time of life is not character apt to receive a tincture from occupation? Interests different, and ways of thinking different in some respects. Each line will thence be a sort of spy upon the two others, ready to give information to the public of anything it sees amiss. Prejudice, should anything of that sort find admittance, will in the different lines be apt to take a different direction, and one branch may serve as a corrective to another. Bodies of men — men in general, and lawyers more especially, are sure to find out or to create a corporate interest: and they can scarcely have one which is not hostile in some way or other to the interest of the public at large. Division may serve to render this professional interest in some measure the less formidable.

As to the National Assembly, nothing can be more manifest than the apprehension it discovers, of a sort of confederacy among men of law. Why not avail itself then of so simple and innocent an antidote?

The committee, in their second draught, though they have struck off two out of the five judges of their district-court, adhere to the other three. The notion of their serving as checks upon one another must surely have been at least one reason, if not the only one, for this adherence. But how much better checks will a pursuer-general on the one part, and a defender-general on the other, make to a judge, than so many fellow-judges? Let one and the same man always preside and take the lead, out of your three judges you get one efficient character, and two sleepers. Give them the lead by turns, you give indeed to all of them the use of their faculties; but still they are three colleagues, sitting together, living together, and moulded by habit into a similarity of conduct, opinion, and affections. Each finds the convenience of winking, as far as he can with safety, at whatever he may find amiss in the conduct of his brethren: they are compelled, on pain of the irksome task of sitting for ever in unpleasant company, to form a common cause; and that cause may be a very different one from the cause of the people.

2. No one of the three occupations is altogether so good an *apprenticeship* for either of the two others, as it is for itself: nor does it afford so competent a state of *probation*, nor so fair a *title to promotion:* especially in judicature, where the superiority of confidence, built on superiority of experience, is the chief basis of the authority of a court of appeal over a subordinate immediate court. See Chap. IV. § 7; Chap. V. Observations, § 5.

3. From the division of labour, something may be derived, even in this line of industry, towards the increase of skill: especially with respect to the exercise of that right of representation already mentioned,* which would form so useful an appendage to every office that has anything to do with the execution of the law. The pursuer-general, by applying his whole faculties to the enforcement of the law in both branches, and in the penal to the keeping every door of escape shut against the guilty, will be the more acute in the discovery of any imperfections the law may remain chargeable with in this point of view, and more skilful in the conception of the proper remedies: while the opposite cause will give the class of defender-generals a peculiar insight into those particulars in which the law, in her anxiety to overtake guilt, may have overlooked some provision that might and ought to have been made for the security of innocence.†

II. Particular reason for not admitting the migration from either of the two other lines into the judicial:—

4. The function of the advocate, even of the official sort of advocate here in question, is a *source of connexion:* it requires unsolemn and extra-judicial intercourse. But *dis*connexion is one of the great attributes of a judge.

III. Particular reason for not admitting migration from the judicial into either of the two other lines:—

5. It would be a discouragement to men from entering on either of the two inferior lines, if, from a lower rank in the judicial, a man were admitted to step into a high rank in either of those other lines. It would diminish the prospect of reward to those who in their youth had borne the heat and burden of the day. This supposes the reciprocal chance cut off by the reciprocal exclusion of the two other orders of magistrates from the judicial line.

IV. Particular reasons for not admitting migration from the line of defender-generals to that of pursuer-generals:—

6. The view of promotion might have an *unfavourable influence on the probity* of a pursuer-general, were he liable to have a defender-general for his competitor. The function of a prosecuting advocate exposes a man to many causes of unpopularity: that of a defending advocate, to scarce any. Against such a competitor, a pursuer-general, if strict and inflexible in the discharge of his duty, would lie under a considerable disadvantage. The consideration of such disadvantage might operate on him as a temptation to relax upon occasion from the observance of his duty.

7. The same cause might occasion *a difficulty in finding proper persons* willing to take upon them the lowest rank in this line. It might be deserted for the other more promising one.

8. It might possibly be thought expedient, in the view of sharpening the diligence of a pursuer-general, to allow him a fixed proportion of any *fines* he has been instrumental in recovering. This expedient, were it adopted, could at the same time hardly fail of *adding* in some degree to the measure of *unpopularity* naturally adhering to the office; and thence to the disadvantage whoever filled it would lie under in a competition with a defender-general. The clause of vigilance, inserted into the pursuer-general's oath, with a particular view to this effect, may reasonably be expected to afford him some protection.‡ But that the plea of compulsion, which it affords, should pass with every man, seems rather too

* See Chap. I. Observations 6 and 8.

† This idea will hardly appear altogether visionary to the English reader, who thinks of the superiority of skill so generally understood to be the consequence of a lawyer's attaching himself exclusively to a particular branch of business: whence the different denominations of *leading counsel*, *special pleaders*, *equity draughtsmen*, and *conveyancers*.

‡ See Chap. V. § 11.

much to expect from a miscellaneous multitude.

I observed at the outset, I could see no particular advantage to be got by mixing the lines. A man, it is true, may conceive a dislike to the one he has first betaken himself to, and fancy one of the others would suit him better. But such a discovery, if made at all, will be made at an early period, in the station of a depute: and in that stage, the door from line to line remains still open.

§ 3. *Different methods of filling the Function of Prosecutor—Open—Close—and Mixed.*

The use and function of a judge is to give execution to the laws. The use and function of a pursuer is to require at the hands of the judge the fulfilment of such his duty, and to investigate, arrange, exhibit, and display to the best advantage, the proofs by which the justice of such requisition is to be made appear.

These two functions are equally necessary to their common end. Without a judge, no laws could be executed: as little could they without a prosecutor.

But a requisition of this nature would be but a vain thing without *evidence* to support it: and before a man can see any ground for making such a requisition, he must have some general ground for expecting at least that evidence sufficient to support such a requisition may be obtained. Three distinguishable operations may accordingly be looked upon in general as alike necessary to the giving execution to the laws: *information, prosecution,* and *giving evidence.**

Prosecution, or, to speak more generally, *action*, or legal *pursuit*, is the only one of the three with which we have any direct concern at present: at the same time that, among objects so intimately connected, it will be impossible to bestow on this a full consideration, without touching in some measure upon the other two.

Three methods of providing for the discharge of this function offer themselves to view:—1. Leaving it open to be performed by persons at large, according as they happen to present themselves:† 2. Providing some one fixed person, or set of persons, by whom, and by whom alone, it shall be discharged in all cases:‡ and, 3. Coupling the particular obligation with the general allowance.

Of the two first of these courses, neither, it will be seen, is of itself sufficient: the third, therefore, which is a compound of the two, is the only eligible one. The *open*, is the most obvious, and the most simple. The nature of things seems in every case to point out the informer as the fittest prosecutor. Of the above-mentioned necessary preliminaries to judicial decision, information comes first in order. Without some ground for prosecuting, who would be, or who ought to be, disposed to prosecute? No informer then, no prosecutor.‖ But having an informer, why look out for anybody else to prosecute? For what should a man inform, unless it be that prosecution may take place? And if it be his wish the task should be undertaken, who so fit as himself to undertake it—he, upon the truth of whose information the propriety and success of the prosecution must depend? But the function of the informer cannot possibly be an appropriated one? It is opportunity only that makes the witness: it is opportunity only that makes the informer: and as it makes a different witness, so does it a different informer, for each individual offence. Information out of the question, choice may indeed make prosecutors: and one prosecutor may serve for all prosecutions, as one judge may not only for all prosecutions, but for all causes. But as opportunity alone can make informers, and the informer is the most natural prosecutor, the most natural course is, that prosecutor as well as informer should be made by opportunity rather than by choice.

§ 4. *Insufficiency of the Open Mode.*

The *open* plan, then, is the most natural one: but is it, in all cases, a *sufficient* one? Here much depends on the nature of the offence, or other incident, that calls for the execution of the law.

Is it the case of a claim (whether on the score of delinquency or any other) of a *purely private* nature? No other prosecutor or plaintiff than the party particularly interested to make such claim, need *in general* be looked out for.§ If he thinks it worth his while to make it, he will do so: if not, the reason for wishing to see it made has no place: it is still less worth the while of anybody else. Here, then, bating the accidental case of special inability, the *open* plan is quite sufficient. Private interest, the cause which creates the demand for this species of service, may be trusted to for supplying it.

Far otherwise is the case with offences of a *purely public* nature.¶ Here nobody has

* It is possible indeed for the judge, if information has been given him, to join to his own function that of prosecutor: or even without either information or evidence, in the rare instance of an offence committed in his presence. Hence in some countries the mode of proceeding styled *ex officio:* and in England the power given in some instances to justices of peace, for example, of convicting on *view*. But the three functions are not in themselves the less distinct.

† This comes nearest to the English mode.

‡ This comes nearest to the French mode.

‖ Public rumour equally supposes an informer, though not an informer in form.

§ This supposes all special inability or insufficiency out of the question, whatever may be the cause: poverty, for instance, age, sex, or intellectual infirmity.

¶ Examples: 1. Smuggling, and other offen-

any interest in prosecuting: no man has sustained any special injury; no man can claim any particular satisfaction. Why should any man take upon him this troublesome and invidious office? The burden would be his alone: in the benefit all mankind would share with him. For the execution of this great branch of the laws, the open plan, accompanied with bare allowance, would be as nothing. But laws of this description there are many, without the observance and execution of which, no society could subsist. Grant that here and there a Curtius shall be found, who, for the pure love of the public, shall throw his fortune as well as repose into the gulph of litigation; it is not for the law at least to expect a people composed exclusively of heroes, whose virtue would render law unnecessary.

An expedient here presents itself: Natural interest — natural inducement — failing, substitute factitious. Such accordingly is the policy observed, more or less, in the laws of every nation.

1. Two properties inherent in the very essence of remuneratory inducement, join in rendering this plan defective. It is *expensive*, and its efficacy is necessarily uncertain: and this uncertainty again adds to the expense. In here and there an instance, it may find you a prosecutor: in others, it may not. But a prosecutor you must have in every case: where you can get no prosecutor, as well might you have no laws. What follows? Lest, in this or that case, what you offer should prove not enough, you must offer what in nine cases out of ten will be more than enough.

2. If at this excessive price you purchased proportionable *certainty*, it would be something: on the contrary, uncertainty goes hand in hand with profusion. Reward may be increased to excess, and still nothing at all like certainty. Multitudes would inform, of whom not one would prosecute. Information is the work of a minute: prosecution may be the work of days, or months, or years. A man may be induced to inform, by a tenth part of that which would still be insufficient to prevail upon him to prosecute.

3. The apprehension of general *odium*, or particular *enmity*, is another consideration capable of driving multitudes from the service, and reducing the efficacy of reward to nothing. Secresy may remove this stumbling-block out of the way of the informer: but for a prosecutor — a real prosecutor, there can be no secresy.*

4. *Ability*, too, may be *wanting* in a thousand instances, where inclination might be gained. Various descriptions of people may inform, who would be either absolutely incapable of prosecuting, or at least eminently unfit for it: such as females, infants, persons infirm, persons of a weak mind, persons subject to indispensable avocations.

5. The efficacy of reward, even when, if unopposed, it might be adequate to its object, is liable to be combated by counter-applications of the same nature. What can one guinea do, where the delinquent is able, and finds it worth his while, to offer two? or where there are others, who, under the influence of private or party interest or affection, find adequate inducements to club their purses for the same purpose? Laws may be made against such compositions and such associations: but the influence of such laws is necessarily precarious.

6. The hired or other voluntary prosecutor, standing alone, and without an inspector or substitute, has, in effect, the power of pardoning. And what must be the weakness of that law, which in every instance lies thus at the mercy of an individual, whom chance, not choice, has listed in the service! For a time, it is true, every law must unavoidably thus lie at the mercy of the informer — true, if there is but one person in a condition to render the law that service: but this is only for a time. Information, it has already been observed, is but the operation of a minute: that minute over, the informer's power of pardoning is at an end: but the prosecutor's lasts as long as the prosecution.

7. Out of what fund, too, shall the reward be drawn? The more common course is, to provide no other than the effects of the delinquent, that is, such of them as are to be recovered at the hazard and expense of litigation, and spite of all his endeavours to withdraw them. Here, then, if the reward fails, the service fails; and at any rate, as against the whole body of the poor, the law is doomed to impotence: but the poor form the bulk of the community. The more power you want from this state-engine, the more you are led to strain it: but the more you strain it in this way, the more apt it is to fail you. The more mischievous the offence, the greater the reward: but the greater the reward, the less the probability that there will be found enough to pay it.

All these observations hold good, though some of them in an inferior degree, with re-

ces against the public wealth: 2. Perjury, and other offences against justice, committed in the view of favouring the escape of a delinquent from punishment, satisfaction to an individual injured out of the question.

* In the English law, in some instances (actions called *qui tam* for penalties given in part to the prosecutor,) it often happens that the person meant under the name of *plaintiff*, *prosecutor*, or *informer*, chooses to be, and accordingly actually is, unknown. But in this case the real prosecutor is the attorney. The client, who is to receive the reward, if recovered, is only the attorney's informer, and the attorney's security for the costs.

gard to such offences of a *private* nature as, in consideration of the public mischief they are conceived to draw in their train, have been generally *raised to the rank of public* ones.* As the factitious interest may fail, in regard to offences purely public, so may both natural and factitious, if any be given, in regard to offences of this mixed nature. It is at least as apt to do so: the natural interest is, in some of those instances, of the lucrative kind: the factitious interest given, has always been solely of that kind: and in offences of the class now on the carpet, this inducement is peculiarly apt to fail.† Theft, robbery, fraud, and so forth, are peculiarly the offences of those who have nothing; and from nothing no damages can be recovered.‡ The lucrative principle of action being out of the question, there remains only the vindictive. But where prudence and compassion join there force, how frequently must they prove too strong for vengeance!

Imperfect then indeed must that system of law be, which depends upon chance, or the action of so imperfect an engine as reward, and that, too, feebly and irregularly applied, for so necessary an assistance. Delinquency, which, whenever the law sleeps, is but the more vigilant and alert, takes note of all the conjunctures when the situation of things refuses a voluntary prosecutor: where no natural interest prompts; where no factitious interest has been provided; where the parties concerned in interest are minors, females, absent, helpless, or insane, and the strongest suggestions of interest are rendered fruitless by inability. Such, as will be seen more particularly a little farther on, is the system, or rather the no-system, of the law of England.

Justice, too, not less than policy, forbids the throwing the whole of the burthen, without a compensation, upon a single individual: much more upon an individual whose very distinction from others is the burden of suffering he has borne already. In the benefit of the prosecution, which is the maintaining the laws in efficacy and vigour, all are sharers; so ought they therefore in the burthen. At the charge of all, he ought to be eased of the expense; nor ought he, without indemnification, to be called upon to take the trouble.‖

§ 5. *Insufficiency of the Close Method.*

A fixed establishment of a set of official prosecutors is therefore a necessary appendage to every judicial establishment. In this office too, as well as in the judicial, the same considerations of responsibility, intellectual fitness, legitimate dependence, promptitude, frugality, and so forth, require that at each tribunal there should be but one officer of this kind, though with the same power of appointing deputies, as well permanent as occasional: and as the demand for his service extends, as we have seen, to all penal cases, so of course ought his duty. Even in causes purely civil, though it would be equally dangerous and useless to put him forcibly in the place of the natural pursuer, or as his chosen assistant;§ yet as far as can be done by a hint thrown out, should occasion appear to call for it, in the way of argument, much good may incidentally result to justice, and there can result no harm, from such an interference.

I mean, where the suitor either requires no assistance, or has been able as well as desirous to procure from other resources such assistance as may suffice. But where poverty, and the various incapacities attending that condition, join in leaving him without resource, where can the individual find a fitter protector than this servant of the public, and what need can there be to look out for any other? See the Chapter on *Pauper* Causes.

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* Examples: 1. Theft: 2. Defraudment: 3. Robbery: 4. Mutilation, or other atrocious corporal injury: 5. Homicide.

† Satisfaction in damages (including restitution) out of the delinquent's substance, answers to what may be reckoned to this purpose the *natural* interest: anything beyond or beside that may be deemed *factitious*.

‡ A reward may indeed be given in these cases at the expense of the public. But such an inducement would be much too expensive to be given in all instances of this class. It never has been given by any general law in the case of common theft, for example: though in England it is given in that manner in the case of highway robbery. As to occasional rewards not given by any general law, they are out of the question here.

‖ The strict truth is, that in this respect there is but little difference between the most private of private offences, and those which have been ranked with public ones. In the former case, no less than in the latter, whatever benefit is reaped from the labour of prosecution by the individual immediately injured, is shared in at least equal proportion by every other member of the community: the only difference is, that what has been restored after privation to the one, is preserved without privation to the other. The danger of peculation by collusive suits, is the only reason why, in cases termed civil, as well as in those termed penal or criminal, an indemnity for this trouble cannot be allowed. Where the defendant is exposed to no punishment, a beggarly plaintiff might get a beggarly defendant to join with him in carrying on a sham suit, that the plaintiff might get payment at the expense of the public for his labour and his time. Against such collusion, the punishment that awaits the defendant in a penal cause, affords what in general will be a sufficient preventive: and without such collusion, a plaintiff in such a cause could not in any such view institute a groundless action, without exposing himself to punishment for calumny, instead of payment for his trouble. See the Chapter on Law-Taxes.

§ Yet such is the course pursued in the Prussian system. See the Chapter on Reconciliation-offices, and that on Advocates, &c.

An official prosecutor ought therefore to be provided. Does it follow that all voluntary ones should be excluded? By no means. That any such exclusion is not necessary, is evident: equally far is it from being of any use. It is inexpedient on a variety of accounts: —

1. *It takes away* from the certainty of punishment, and thence *from the efficacy of the laws.* Upon the concurrence of all those whose co-operation is necessary to the execution of any given law, the execution of it in any particular instance, and thence in general the certainty of such execution, must depend. That certainty can never be entire: but the fewer chances are excluded, the less it will want of being so. If the law is not a good one, why suffer it? If it is a good law, why do anything to lessen its effect?

2. *It establishes an arbitrary dispensing power.* An exclusive power of reclaiming the execution of the laws, lays them, as far as it extends, at the feet of the person thus endowed. It gives him the equivalent to a *negative* in legislation: it gives him more; it gives him, in each individual instance of their execution, the sole *initiative.* It gives him consequently, not only the *power of pardoning,* but a power much greater than the power of pardoning. It gives him a power greater than the power so called, as exercised by the King of England. That monarch's power of pardoning extends not to the saving a man from prosecution: even when it precedes conviction (a sort of pardon very rarely granted,) it must be pleaded; and the plea cannot be preferred till the prosecution has been begun, and the grounds of it made public. The difference is no slight matter. In the one case, a delinquent can be saved from so much only of the punishment as goes by the name of punishment; to the portion of infamy naturally adherent to the offence it leaves him still exposed: in the other case, he may be saved not only from the punishment, but from the infamy. A direct pardon, while it takes away the nominal punishment, aggravates instead of mitigating the infamy. It is a sort of certificate of guilt: for who would be pardoned if he could be acquitted? By attracting the public attention, it renders the infamy proportionably extensive, and gives it redoubled force. A direct power of pardoning, exposed as it thus is by the nature of things to public inspection, has not anything like the capacity for harbouring abuse. A pardon therefore so called is not likely to be issued in such a stage, without such grounds as will bear inquiry; lest the infamy of the offence should recoil from the hand that receives the pardon to the hand that gives it. The indirect faculty of pardoning here in question, by being so inconsiderable in show, is but the greater in effect. Its power of mischief has no bounds. At first glance you might suppose it confined to corrupt or ill-judged lenity: in fact, it is not a whit less adapted to the purpose of oppression: for whoever can license oppression can oppress.

In comparison of a despotism like this, what is the power of a judge? Small indeed: even of an independent and irresponsible judge. An arbitrary judge may save delinquents from punishment so called: but be he ever so arbitrary, he cannot screen them altogether from natural infamy. He may stop proof: but he cannot prevent accusation. Something he must have heard, and something others must have heard with him, ere he can say, *I will hear no more.* Under such circumstances, an acquittal is a certificate of guilt.

3. It enables a man, under favour of that dispensing power, to establish a secret despotism — the more connivances, the more delinquents: and in every known delinquent he beholds a slave. Interest is thus put in direct opposition to duty: neglect of duty has arbitrary power for its reward; and the greater the neglect, the greater the reward. The multitude of these slaves has scarce any other limits than what a man's own moderation may think fit to set to it. Connivance, seconded if necessary by rumour, gives to understand that such and such laws may be violated with impunity: though it should be rashness alone that could be the first to profit by the intelligence, yet reflection and calculation may follow by degrees. What a variety of transgressions are there, which, if no one were to be punished for them, almost every one would give into without scruple! But any one such transgression thus become universal, is enough to bring the whole body of citizens within the pale of this despotism, and depopulate the empire of the laws.*

* Take, for instance, the case of libels under the English law: an offence of which there is no definition by law, against which in fact there is no law, but of which the definition, as far as it is to be collected from judicial practice, is the publishing anything concerning a man, whether in a private or public character, which a man would not like to have published concerning him. If ever newspaper was a libel, so is perhaps every newspaper that was ever published, not to mention books of politics, biography, history, and so forth. By the same law there are as many libellers as there are writers, readers, and repeaters of newspapers. Were this pretended law to be but half executed, what would be the consequence? The people remaining out of jail would not be enough to guard those that were in. Suppose, then, a man vested for life with the exclusive power of prosecuting for libels at the public expense: — the king has neither the power nor the wealth that this man might have if he thought fit to stoop for it. Suppose the execution of the laws against religion, as they stand at present, given to him upon the same terms. The number of catholics, presbyterians, and other non-

The monster I have been painting is no chimera. A decree of the National Assembly, I much fear, will be found to have given him existence. By Art. 8 of the decree of July 5, 1790, the officers by whom the function of prosecution is to be carried on, are to be "named by the king, and named for life." By Art. 9, they are not to be removed but for "forfeiture judicially pronounced." Compare this part of the establishment with that which relates to judges. How is it with regard to *nomination?* The choice of these magistrates has been given, not to the king and the people jointly, as proposed by the committee, but, as proposed at the commencement of this work, to the people solely. So far is well: but the choice of the public prosecutor, an office, the power of which, as far as it extends, has been shown to be in effect so much greater than that of a judge, is given —to whom? To the people? No. To the people and the king together? Not so neither; but to the king alone: a power, of which, under the venal plan of the ancient despotism, the crown never possessed the smallest share. How is it with regard to *dependence?* The judges are, in virtue of the principle of sexennial election, dependent in some sort, dependent, and that to a greater degree than any English member of parliament, upon the good opinion of the people. These more powerful magistrates are under no sort of regular dependence upon either king or people.

Was it the notion of the committee, in fixing these magistrates in their places for life, to take them out of the dependence of the king, and obviate any danger apprehended from the royal nomination? On the contrary, it is the very way to increase, or rather create that very danger. In the first place, they are more exposed to the undue influence of the crown in this way, than if they were even removable at the pleasure of the crown: in the next place, were they altogether out of reach of that influence, it would be never the better for the people.

I say they are more exposed to the undue influence of the crown, than if they were removable at the pleasure of the crown. At a first glance, this is a paradox: at a second, nothing can be more true. Had they been in this way dependent upon the king, they would have been in some sort dependent upon the people. How so? In virtue of the dependence the king is under with regard to the National Assembly, the chosen dependents of the people. If A is dependent upon B, and B upon C, A too is dependent upon C. Confined to regular and open dependence, to that sort of dependence which results from the power of removal, there is not an axiom in mathematics more indisputable. But where the dependence, in one of the links, is of that irregular kind which is constituted by exposure to secret influence, the chain is broken, the consequence does not follow. How then stands the matter with regard to these magistrates? They are exposed to fall under the dependence of the king, but in such a way as does not bring them at all under the dependence of the people. Had they been removable by the king, they might have been removed upon occasion, in compliance with the wishes of the people. Now, they cannot be removed by the king on that ground, any more than on any other. But in this apparent impotence of the crown lies its real strength. By not being liable to be *removed* by the king, they are not the less liable to be *gained* by him: and when once gained by him, they are gained to some purpose: for there is nothing in the world that can take them out of his hands. Fear of being removed is only one means of being gained: but if a man is gained, what matters it whether by his hopes or by his fears? The natural course of things is, that the whole body of these magistrates should be at the king's devotion. If their own promotion in their own line depends upon him, the means are clear at once: but be this as it may, they will have children or other connexions, whom he can not only place, or refuse to place, but displace. Had they been removable by the king, they would not have been worth gaining by him: for when he had gained a man, he might have been obliged to turn him out, in compliance with the wishes of the people. Being irremovable by him or anybody else, they are worth gaining, and he could not wish for a fairer chance for it. He has their whole lives to gain them in, and they have their whole lives to serve him in. Had he possessed the power of removing them, he could scarcely have exercised it but in subserviency to the wishes of the people. He could scarcely

believers in the infallibility of the church of England, would give the exact number of his slaves.

In London, the extorting money by threats of accusation, true or false, in a case where suspicion without proof is ruin, is a trade but too well known. The wretches who carry it on, do so at the peril of exemplary punishment. The magistrate invested with the powers here in question might carry on the same sort of trade to any amount, in full security, and without being confined, as those wretches are, to the choice of the offence. People about him might sell his connivances with or without his knowledge; as the servants of an ambassador smuggle in their master's name. From this great officer, connivance would be a complete protection: whereas, in dealing with those malefactors, a license from one set affords no security against another. There have been times, and those not very remote, when a clandestine tax upon marriages deemed incestuous afforded a regular revenue to the retainers of the courts called Ecclesiastical. Safety as well as success was secured to this species of extortion, by what may be reckoned a very loose kind of monopoly, in comparison of the strict and perfect one now before us.

have ventured to exercise it without some known reason capable of being avowed. Were a magistrate of this kind to have been displaced, the people could have said, and naturally would have said, "Why do you do so?" But could anybody say, "Why have you forborne to give a place to a brother of his, or to a son?" The efficacy of a power as an instrument of bad government, is in exact proportion to the irresponsibility of its exercise: hence it is, that in many cases patronage has in this respect so much the advantage over a power of removal.

But were these magistrates as clearly out of the reach of royal influence as they are palpably exposed to it, would their independence be ever the better for the people? By no means. See on this head what has been said of judges [Ch. V. § 1.] Independence without power, is pure liberty: independence coupled with power, is but another word for despotism. Dependence so it be legitimate, not independence, is, as we have there seen, the proper condition, and the only proper condition, of an agent of the people. The thing really mischievous is arbitrary power: whether the hand it is lodged in be called a king's or a minister's, or an attorney-general's, is of mighty little consequence. The thing really mischievous is arbitrary power: and this, it is but too true, these magistrates are in possession of: whether they abuse it in pursuit of views of their own, or in pursuit of the views of a minister, is of little consequence. They may abuse it in both ways; but the greater temptation of the two is that of which the cause lies in themselves. It is only by accident that a minister will have a point to gain, especially a point worth gaining at the expense of so much management. But of his own, a man in their situation, if he has passions, will have points to gain of all sorts, and without end.

Far be it from me on this single error to ground any sinister prophecies. It is not this error, nor a thousand such as this, that could make at this time of day a bad government in France. Where correction is so easy, the most palpable opportunities of abuse can never be productive of any serious mischief. Liberty is in legislation what charity is in religion. When a constitution is sound at heart, a thousand little disorders may find their way into it without producing any very malignant symptoms. But though the constitution of a country were like the stomach of a Mithridates, wholesome diet would still claim the preference.*

4. An inferior inconvenience, though by no means an inconsiderable one, resulting from this monopoly, is the excluding in all cases from the charge of prosecuting, informers, who in some cases are the best prosecutors, and witnesses, who in all cases are the best informers.

(1.) In many cases it is natural that a volunteer, such as the informer, should make a better prosecutor than any one who is such by office. Under what idea is one and the same person appointed in all cases for this duty? That in all cases the same man will be the fittest for it? No: but that in no case it may be without somebody to undertake it. In the way of zeal and activity, when ability is not wanting, nor connivance to be apprehended, much more may be expected from volunteers than from a veteran, in whose bosom the habit of action so naturally begets the habit of indifference. Hope of success is the principle that animates the one: fear of censure, the consideration that compels the other. Indifference is the exclusive attribute of the judge: zeal, not indifference, is the virtue of the prosecutor: against defect of zeal, if found in this station, there would be no remedy: against excess, the remedy is obvious and adequate, the controuling power of the judge. The difference will be the more obvious, and the advantage, not to say necessity, of preferring the volunteer, the more unquestionable, where a factitious reward dependent upon success is the only means of obtaining informers that can be depended upon: as in cases of offence of a purely public nature. How much would the value of the reward be diminished, if the attainment of it were made unavoidably to depend upon the efforts, not of him who is to enjoy it, but of another who has nothing to do with it, and in whom he has perhaps no confidence!

(2.) A witness is the best informer; and thence, as such, the best prosecutor. If, in the capacity of witness, informer, or prose-

* The great check upon this power is the right reserved to individuals of claiming satisfaction for the private injury. So far as this extends, secret connivance on the part of the public prosecutor is impossible. This accordingly is the circumstance which, under the old system, prevented the dispensing power from being pushed to such a degree as to excite any general and notorious dissatisfaction. But this check reaches no farther than to offences affecting particular individuals: it extends not to such as are of a purely public nature. Here, then, was the sphere within which the arbitrary dispensing power found room to display itself. An offence better alluded to than named, and which, though it appears to be much more common in France than in England, is frequently punished in the latter country, and for many years back scarce ever, if at all, in the former, seems to afford an instance of the exertion of such a power. As to the propriety of such a connivance, is out of the question here: but the fact of such connivance will serve as one instance, amongst many others which doubtless might be found, to prove that the notion of the actual exercise of such a dispensing power, and that to such a degree as to despoil a law of almost the whole of its efficacy, is far from a chimerical one.

cutor, a man could always be as sure of every other man as of himself, there would be no room for choice. As it happens, this is not the case.

Separate, then, the informer from the witness, what is the consequence? In the first place, you drive men in both capacities from the service of the law. Delinquency gets a double chance of impunity, and the laws a double chance for impotence. They will go unexecuted at one time, because a witness sees nobody that will prosecute; at another time, because he who would have prosecuted has got neither evidence nor information. *Evidence*, properly so called, is evidence to ground *conviction: information* is evidence to ground *prosecution*. In one case, as in the other, where is the sense of rejecting the best evidence, and receiving worse in preference? Whose account deserves to have most weight? — that of a man who knows how the affair passed because he saw it, or that of a man who knows nothing about the matter but from what he has heard somebody else say, or from some inconclusive fragment of circumstantial evidence? Upon the strength of evidence that is to come from *me*, *you* venture on a prosecution. What follows? That your fortune and your character are so far at my mercy—at the mercy of one of whom perhaps you have no knowledge. This sort of faith, great as it is, must in many cases be reposed, or prosecution could not take place: but to what purpose create such a necessity out of nothing? How different the case where *you*, the witness, are received to inform; and having informed, to prosecute! *You* know what it is you know: on *yourself* you can depend: of *yourself* you may be sure.

5. Driving men from the service of the law is not the only inconvenience resulting from this exclusion. It puts the law itself into the power of individuals. Ordain that a prosecutor or an informer shall not be admitted as a *deposing* witness, what follows? That, to the man whom opportunity has made either the sole *observing* witness, or a necessary witness, you have given the power of pardoning. He lodges the information, or he commences the prosecution: and when the time comes for giving evidence, his evidence, however conclusive, is not to be heard, and acquittal is the consequence.

When the functions of prosecutor and witness are separate, and the prosecutor finds himself under the necessity of pinning his faith upon the conduct and character of another person in the quality of witness, inaccuracy or subsequent falsehood is not the only danger he stands exposed to. Treachery has a game in its power, which, under the improvident regimen of some systems of law, is probably but too often played, by those whose habitual study it is to elude the laws, against those whose habitual business it is to give them their execution. Falsehood is thrown out as a lure, for an informer and prosecutor to catch hold of: when evidence comes to be given, the falsehood is dropped, and truth substituted in its stead. Such is the situation of every man who, upon the strength of evidence not his own, ventures to step forth and give his service to the public in this perilous and invidious line! responsible, at the peril of fortune and character, for the levity or treachery of another, perhaps unknown to him, and never of his choice. The guilty traitor assumes the accent and the port of injured innocence: the reproach of calumny falls upon the deluded minister of truth and justice. Then comes the licensed accessary after the fact, and sharpens the wound with the venom of his tongue: — "See! this is your own witness! Out of his own mouth you stand condemned!"

Under the English law of evidence, for example, what species of treachery can be more certain of its effect, or more secure from punishment? For the truth told at the trial, there can be none, for it was the truth: for the falsehood before the trial, there can be none, for it was extrajudicial, and not upon oath. Against such vile artifice nothing that can be done by the law on this head can, it is true, afford any perfectly effectual remedy: but we see the danger to which the individual and the cause of justice stand exposed under a separation of the two functions, and one reason, amongst others, why the endeavour of the law should be, not to discourage the conjunction, but to favour it.

The incongruity is more particularly striking in that numerous class of cases where a factitious reward is the law's sole reliance. When you advertise thus for assistance, what is it you really advertise for? what is it you are really in want of? A prosecutor? No such thing. A prosecutor you might get anywhere: a prosecutor, as such, you have no more need to advertise for than a judge. An informer? Perhaps so. But when you have got one, what are you the better for him, if his *information* neither is itself *evidence*, nor leads you to *evidence?* The one thing needful, the thing you really want, the thing you really mean to get by thus advertising, is *evidence*. The sort of person you are really in want of, the sort of person you really advertise for, is not so much a prosecutor or an informer, as a witness. Get evidence, you get everything: miss of this, you had better have got nothing. Get a *witness*, in this way, you get an *informer* into the bargain: for, in letting you know that it has fallen in his way to be a witness, a man *informs*. Get an informer who neither was himself a witness (I mean, an *observing* witness,) nor can give you any information that will answer the purpose of

evidence, or lead to evidence, you had better not have had him.* An informer, who cannot himself give you anything that can be accepted as evidence, may still have his use. True. But on what condition? On condition of his enabling you, by means of his information, to get it from some other quarter. But is his information the worse for being capable of being itself used as evidence? On the contrary, no other information can be so satisfactory or so good. When, in the first instance, you can hear how a thing passed, from a man who saw how it passed, to what purpose turn him back, for the sake of hearing of it from somebody else, who knows nothing about the matter but from him? Is your informer the worse informer, because, having been an *observing* witness, he is capable, and in that character, of becoming a *deposing one?* On the contrary, he is by so much a better one than any other.

"Oh, but bought evidence is bad evidence." Is it so? Then why attempt to buy it? If evidence is to be had for nothing, why bid money for it? By thus bidding for it, instead of getting good evidence, you deprive yourself of it: the good you might have had, you yourself turn into bad. If it is not to be had without buying, he then, whoever he is, that supplies you with it — your informer or your prosecutor must have bought it, or you will never get it. But if it must be bought after all, why not by you as well as by him? why not directly as well as circuitously? Why pay two men for the service of one? And what is information itself, but evidence? It may be *circumstantial* evidence only, and not *direct* it may be *hearsay* evidence only, and not *immediate:* but evidence it is, as far as it goes, at any rate. If *bought evidence* is *bad evidence*, so then is *bought information bad information.*

This underhand practice, this confusion and double dealing, this contrivance for getting one thing by asking for another, to what cause is it to be ascribed? In England at least, and not improbably in more countries besides England, to a want of concert between the statute and common law. The former having public good, often for its real, and always for its professed end, pursues that end by such means as the nature of things and men supplies, collecting improvement by slow but advancing degrees from the stores of reason and experience. The other, never having had public good so much as for its professed end, pursues in primitive blindness whatever blind track it stumbled upon at first. "Men are of two sorts, the good and the bad: the bad are governed by interest; they act from motives: the good are governed by nothing at all; they act without motives: in them, action is produced in the way of equivocal generation; it is an effect without a cause. Witnesses ought of course to be of the good class: therefore, if a man acts or speaks under the influence of interest, he is not fit for a witness; he ought not to be heard. Of interest there is one kind; and there is but one — that which is created by money. Love of fame has been pronounced the universal passion. The man who said so, wrote a book, in which he thought he had proved it. He was a poet; he knew nothing about the matter. We lawyers know better things. There is no such passion as the love of fame. One passion there is in human nature — the love of money. It is not only the universal passion, but the only one. What is the consequence? That money, and money alone, governs every man: and a particle of it, less than the smallest that ever came out of a mint, is quite sufficient for the purpose. Take any man you will; hold up before his eyes a farthing, or the five-hundredth part of a farthing, it makes no difference: you draw him out of the good class into the wicked class at once. Look the world over: you will not find that man whom the glimpse of a gain to that amount would not convert into a perjurer: although honour, love, friendship, natural affection, even gain under another shape, and that to an amount ever so much greater, were all striving in conjunction to draw him to the other side. As it is impossible, therefore, that a man who could get a farthing by perjuring himself should not perjure himself were he to speak, to what purpose should he be heard? Therefore no man who can be said to have an interest ought to be admitted in character of a witness, in any case. Ac-

* The word *witness* is used indiscriminately with reference to two very distinct and distinguishable situations: that of a man who actually saw, heard, or in one word *observed* so and so; and that of a man who avers, *deposes*, *narrates*, in a judicial way, that on such or such an occasion he made observation as above. In the first case he may be styled an *observing* or *percipient witness;* in the other, a *narrating* or *deposing witness.* The thing to be wished is, that every one who *has been* an *observing* witness, with regard to the matter in question, should, as far as there is need of his testimony, *become* a *narrating* witness: and that at any rate every man, without exception, who *becomes* a *narrating* witness, should *have been* an *observing* one so far as he narrates. In as far as he fails of being so, he becomes a *false witness*: and, if what there is false in his narration is accompanied with the consciousness of its being so, and has been given upon oath, a *perjured* one. The assistance, then, which is really wanted, the assistance which the law by this means endeavours to obtain, is that which he who *has been* an *observing* witness lends, by becoming a *narrating one.*

The expressions *testis oculatus*, *an eye-witness*, *an ear-witness*, and all others which refer exclusively to a single one of the five senses, are so many partial and impartial expressions of this idea.

cordingly, in a thousand cases, he may be admitted notwithstanding; and that, be the value of the interest ever so considerable." Such is the philosophy, and such the consistency of the common law.

To the authors of the statute law it has happened to reason differently: according to them, the good and the bad are, it should seem, alike obsequious to the dictates of interest, real or imagined; though some are more so to one modification of it, others to another: nor does it follow absolutely, that because a man will tell truth for a certain sum, he will tell lies and perjure himself at the same price. But how long will superior authority suffer itself to be set at nought by subordinate? How long will discernment see its purposes frustrated by perversity and ignorance?

§ 6. *Of Sleeping Laws.*

An official monopoly of the right of prosecution is naturally connected with the policy of *sleeping* laws. It is a fit instrument of such policy, and at first sight one would suppose an indispensable one. It is easy enough to conceive how laws should sleep, when there is but one man in the world that can call them into life. How this should ever happen, when it is in the power of any one of the community whatever to awaken them at pleasure, is not so obvious. Sure it is, that for such a lethargy there can be no place, but for some radical principle of weakness pervading and debilitating the whole system. If the burthen of discouragement that presses upon the faculty of calling the laws into action is so enormous as to amount in general, in quiet times, to a prohibition, laws may remain thus torpid, though that faculty exists in appearance everywhere. But such is not the natural state of things: and a man must have some acquaintance with the English system of procedure, to be able readily to conceive it. Setting out of the question a state of things so singular, a country where the temple of penal justice is thrown wide open is not a natural receptacle for sleeping laws. Those who look upon such furniture as either useful or ornamental, should suffer but one door to that temple, and lodge the key of it in a single hand.

Of the condition of him whose curse, I had almost said whose crime, it is to live under such laws, what is to be said? It is neither more nor less than slavery. Such it is in the very strictest language, and according to the exactest definition. Law, the only power that gives security to others, is the very thing that takes it away from him. His destiny is to live his life long with a halter about his neck; and his safety depends upon his never meeting with that man whom wantonness or malice can have induced to pull at it. Between the tyranny of sleeping laws, and the tyranny of lawless monarchy, there is this difference: the latter is the tyranny of one, the other is the tyranny of millions. In the one case, the slave has but one master; in the other, he has as many masters as there are individuals in the party by whom the tyranny has been set up.

Tyranny and anarchy are never far asunder. Dearly indeed must the laws pay for the mischief of which they are thus made the instruments. The weakness they are thus struck with does not confine itself to the peccant spot; it spreads over their whole frame. The tainted parts throw suspicion upon those that are yet sound. Who can say which of them the disease has gained, which of them it has spared? You open the statute-book, and look into a clause: does it belong to the sound part, or to the rotten? How can you say? by what token are you to know? A man is not safe in trusting to his own eyes. You may have the whole statute-book by heart, and all the while not know what ground you stand upon under the law. It pretends to fix your destiny: and after all, if you want to know your destiny, you must learn it, not from the law, but from the temper of the times. The temper of the times, did I say? You must know the temper of every individual in the nation; you must know, not only what it is at the present instant, but what it will be at every future one: all this you must know, before you can lay your hand upon your bosom, and say to yourself, *I am safe.* What, all this while, is the character and condition of the law? Sometimes a bugbear, at other times a snare: her threats inspire no efficient terror; her promises, no confidence. The canker-worm of uncertainty, naturally the peculiar growth and plague of the unwritten law, insinuates itself thus into the body, and preys upon the vitals of the written.

All this mischief shows as nothing in the eyes of the tyrant by whom this policy is upheld and pursued, and whose blind and malignant passions it has for its cause. His appetites receive that gratification which the times allow of: and in comparison with that, what are laws, or those for whose sake laws were made? His enemies, that is, those whom it is his delight to treat as such, those whose enemy he has thought fit to make himself, are his footstool: their insecurity is his comfort; their sufferings are his enjoyments; their abasement is his triumph.

Whence comes this pernicious and unfeeling policy? It is tyranny's last shift, among a people who begin to open their eyes in the calm which has succeeded the storms of civil war. It is her last stronghold, retained by a sort of capitulation made with good government and good sense. Common humanity

would not endure such laws, were they to give signs of life: negligence, and the fear of change, suffer them to exist so long as they promise not to exist to any purpose. Sensible images govern the bulk of men. What the eye does not see, the heart does not rue. Fellow-citizens dragged in crowds, for conscience sake, to prison, or to the gallows, though seen but for the moment, might move compassion. Silent anxiety and inward humiliation do not meet the eye, and draw little attention, though they fill up the measure of a whole life.

Of this base and malignant policy an example would scarcely be to be found, were it not for religious hatred, of all hatred the bitterest and the blindest. Debarred by the infidelity of the age from that most exquisite of repasts, the blood of heretics, it subsists as it can upon the idea of secret sufferings—sad remnant of the luxury of better times.*

It is possible, that, in the invention of this policy, timidity may have had some share; for between tyranny and timidity there is a near alliance. Is it probable? Hardly: the less so, as tyranny, rather than let go its hold, such is its baseness, will put on the mask of cowardice. It is possible, shall we say, that in England forty should be in dread of one: but can it be called probable, when in Ireland forty suffer nothing from fourscore?

When they who stand up in the defence of tyrannical laws on pretence of their being in a dormant state, vouchsafe to say they wish not to see them in any other, is it possible they should speak true? I will not say: the bounds of possibility are wide. Is it probable? That is a question easier answered. To prevent a law from being executed, which is the most natural course to take? to keep it alive, or to repeal it? Were a man's wishes to see it executed ever so indisputable, what stronger proof could he give of his sincerity than by taking this very course, in taking which he desires to be considered as wishing the law not to be executed? When words and actions give one another the lie, is it possible to believe both? If not, which have the best title to be believed? The task they give to faith and charity is rather a severe one. They speak up for laws against thieves and smugglers: they speak up for the same laws, or worse, against the worshippers of God according to conscience: in the first instance, you are to believe they mean to do what they do; in the other, you are to believe they mean the contrary. Their words and actions are at variance, and they declare it: they profess insincerity, and insist upon *being*, shall we say, or upon *not* being believed. They give the same vote that was given by the authors of these laws; they act over again the part that was acted by the first persecutors: but what was persecution in those their predecessors, is in these men, it seems, moderation and benevolence. This is rather too much. To think to unite the profit of oppression with the praise of moderation, is drawing rather too deep upon the credulity of mankind.

For those who insist there is no hardship in a state of insecurity, there is one way of proving themselves sincere: let them change places with those they doom to it. One wish may be indulged without a breach of charity: may they, and they only, be subject to proscription, in whose eyes it is no grievance!

§ 7. *Means of engaging Informers and Prosecutors.*

Power without *will* will never produce action. Information and prosecution, like every other sort of action, must have their *inducement:* and that inducement must be adequate. If this necessary condition exists without the help of law, it is well: if not, the deficiency must be made up by law, or the law will find herself without hands. But inducement does not commence, till *discouragements* of all sorts have been either surmounted or removed. What if the law herself be found adding to the load?

The discouragements in question apply more particularly, some of them, to the function of *informer*, others to that of *prosecutor.* The nature of the obstacle will point out, in both cases, the nature of the resource.

First, as to informing. Two natural obstacles, independently of all factitious ones, tend to dissuade a man from taking upon him this function; *enmity* and *odium:* 1. The particular enmity of the individual informed against, and his particular connexions; 2. The odium, or sentiment of aversion, which mankind in general are but too apt to manifest towards the individual who takes upon him

* Seventy thousand catholic dissenters, added to two hundred thousand presbyterians and other protestant dissenters, are to join in first subduing and then oppressing, eight millions of church of England men. So irrational are the principles of these heretics, that their prevalence is the greatest calamity that can befall the nation. So rational are they at the same time, as well as so concordant among themselves, that they want nothing but fair play and the liberty of being heard upon equal terms, to gain the majority of churchmen, and make them either catholics, or presbyterians, or independents, or quakers, or all at once. To prevent a catastrophe thus horrible and thus imminent, the whole body of these heretics are to be kept in a state of slavery, collectively and individually, with regard to the whole body of the orthodox. The former are to be, with regard to the latter, precisely what the Helotes were with regard to the Lacedæmonians. Every man of the one class is to have it in his power at pleasure to devote to ruin every man of the other, whenever he happens to be in a mood for it. Upon such terms, and upon such terms only, the church is safe.

to render to the cause of justice this necessary service. These dissuasives may both be termed *natural* ones. They exist without, and even in spite of, anything done on the part of the law: but even here it is in the power of the law to add to the burthen: nor is even this inconsistency without example.*

The case is still worse, if a man cannot inform without being compelled to prosecute. Nature is not in fault here. Obligation is the pure work of law. But of this presently.

As to remedies: against *enmity*, there is but one, which is *secresy*. But this, as far as it can be applied, is an effectual one. Secresy indeed, if in all cases equally and absolutely impenetrable, would be a cloak to calumny. What then is to be done? While no indications of that injury appear, keep the veil inviolate: where any such indications betray themselves, remove it.

Under such conditions, where can be the harm of secresy? The moment it can be productive of any, there is an end to it. The moment it can be of any use to anybody that the informer should be visible, he is brought to light.

So long as the information is not chargeable with calumny, to what purpose should the author of it be known? If it be true, instead of harm it has done good: if false, then indeed there has been harm done; but unless it be not only false but groundless, even here there is no injury.

To judge whether a charge, being false, is also groundless, is it necessary to know, in the first instance, who gave the information? By no means: before you have any concern with the informer, you must look in the first place to the evidence. Witnesses, as such, are known at any rate: if in that character a man calumniates, in that character you may punish him: a veil which covered him in no other character than that of informer is not worth removing, for it has proved no screen to him. If witnesses are altogether wanting, then indeed, but then only, is it material to look for the informer.

Dragging a man thus to light who wishes to be concealed, can be of no use but for one or other of two purposes: to subject him to punishment under the name of punishment; or to subject him to the burden of making satisfaction, which with respect to him is the same thing. If for either purpose discovery be deemed necessary, discovery will be made; if not for either, what use in making it? But the mischief of making it is what we have already seen.

Great outcries have been made in different countries against secret accusations, and not without great reason. Why? Partly because the veil was made so thick as to serve as a cloak to calumny; partly because the laws thus executed were the work and the instruments of despotism. Were the calumny ever so conspicuous, a single person had it in his power to screen it: it might oftentimes be his interest so to do, and in doing so he was irresponsible. Where the law itself is odious, every thing and every person occupied in its service, shares the odium. How many pure and excellent articles in the apparatus of the law have lost their character in this way! and how many bad and unserviceable ones have, by their very unserviceableness, become popular! See the Chapter on Juries. Few popular sentiments that have not their root in reason: still fewer that have not spread beyond the reason out of which they grew.

By whom has the clamour against secresy been raised? Sometimes, perhaps, by men who, without being delinquents, feared the being treated as such by this means; but by delinquents always, and of course. Had it, however, been confined to delinquents, it would not on that account have been always undeserving of censure. Under a tyranny, honest men are delinquents: and to do what can be done towards weakening the power of the laws, is the interest of honest men. If indeed the veil of secresy is tied down with such tightness as to serve as a cloak to calumny, whatever outcry has been raised against it, has been just in every point of view: in that case all men, delinquents or not, are interested in its being removed.

When a defendant, not content with saving himself, sets up an allegation of calumny, and requires that the author of it may be made known, in order to be made responsible for the wrong, to whom ought it to be given to decide upon this claim? Not to the pursuer-general, but to the judge. Why so? Because this, of all others, is a question not to be decided but in public, and upon argument: but to decide upon a question in public, and upon argument, is to *judge*. To vest the decision in the pursuer-general without argument, would be to invest him with an arbitrary power, which, like every other arbitrary power, a man will, at one time or other, find it his interest to abuse. He would possess a power not only of licensing, but of perpetrating calumny, and that without controul. Familiarized with this enormity in proportion to his continuance in office, the impression it made on him would grow gradually fainter and fainter; he would grow weary of prosecuting it; he would come to regard it without emotion, and to pass it by without notice. What if, in addition to this *negative* constant interest, he happens in any case to have a *positive* advantage to gain by throwing a cover over the wrong?

* I forget what English statutes I have observed, adopting, as it were, and fomenting the vulgar prejudice.

The modification thus given to the law of secresy will not, in deterring false information, drive away true. A man who believes what he says to be true, will hardly expect to see it appear not only false, but so palpably false as to be deemed groundless and calumnious.

The same remedy applies equally to the *odium*.

But here, however, it is not the only one. This discouragement has its root in vulgar error: a weed which legislation, would she but stoop to take *reason* for her instrument, need scarcely fear the not being able to eradicate. " Is the law a mischievous or an useless one? — Its existence is a nuisance. Is it an useful one? To be so, it must be executed: and how is it to be executed without an informer? Without this coadjutor, a judge is but an empty name. Each in his sphere, they co-operate towards the same end. Shall the judge then be held in honour, and the informer, without whom he is nothing, be vilified and contemned?" Such is the language of plain truth: and why should the law grudge to use it? Can anything be more satisfactory or unanswerable? What error, what prejudice, could stand against the highest authority, supported by the highest reason? From what source could instruction fall with greater weight than from the mouth of law?

The experiment of employing *reason* in government is, it is true, almost an untried one. Hitherto man has scarcely been considered by law as an animal susceptible of intelligence. Her language has been simply that of *will* forcing will, not of *understanding* instructing understanding. The preambles of the English statutes are rather the discourse of the draughtsman to the legislator, than that of the legislator to the people. And, to whomsoever addressed, what is the stuff they are made of? — " *Whereas doubts have arisen* " — " *Whereas inconveniences have ensued.*" — As coarse and as flimsy almost as that of oaths of office [see Chap. V. § 11.*] In France, where to act in the strictest concert with public opinion is the boast of government — in France, at least, where legislation, having neither disdained nor feared to grapple with one of the most violent and inveterate of prejudices,† has so lately won the completest victory, the task of instruction will not be thought foreign to her office.

Lastly, as to the function of voluntary prosecutor. Take it separate from that of informer, it stands clogged with two discouragements, *trouble* and *expense*.

Of the *trouble*, a certain measure is inherent and unavoidable. The business of legislation under this head is to find out the *minimum*, and to reduce the actual measure to this *minimum*. Of this, sufficient has been said in a former chapter.‡

Of the *expense*, the prosecutor may be disburdened altogether: and since he may, he ought to be. Equity in this concurs with policy. Where all men reap the benefit, why should one man alone bear the burden? See the Chapter on Law-Taxes. If you will not ease him of it, the least thing you can do is to forbear to add to it. But, if this be your object, you must steer a course in every point the opposite of that pursued by the English system. You must neither fabricate expense openly, nor, what is much worse, make trouble in order to make expense. You must neither plunder him for the public by taxes, nor for individuals by fees. You must neither commit these abuses, nor, what is as bad, connive at them.

The reproach of inconsistency is not the only one you incur by stripping a man thus with one hand, while you pretend to reward him with the other. It is not one, nor two, nor ten shillings, given in the way of reward, that makes up for the discouragement of one shilling taken in the way of tax. The tax is certain, and must be paid in the first instance: the reward is remote; it is uncertain in its very nature, and in the current systems rendered ten times more so by the contrivances for substituting chance or fraud to justice, and violating in solemn mood and form the assurances of the law. What if the shilling you thus begin with demanding of him is more than he has to give? Of the twenty thousand pound prize, what is the worth to him who has not money for a ticket?—But in this state of inability are the bulk of men.

When so much of the expense as has been the work of law has been removed by law, and, by the removal of this factitious part of the burden of expense, the whole mass reduced to that part of it which may be termed *natural*, a farther problem in this branch of economy is the reduction of this natural part to so much of it as is *unavoidable:* concern-

* Among the preambles to the French edicts, there are some which contain a little more information; witness that of the excellent Turgot, an edict for the liberty of the corn trade. Even that, however, would not have been the worse, had the reasoning been a little more pointed, and less diffuse.

† That which extended to the kindred of a malefactor the infamy attached to certain crimes, or rather to certain punishments, and made incapacitation with regard to offices the consequence. The case here alluded to is that of a man of the name of Agasse, capitally punished for forgery; whose innocent relations were in this very view promoted immediately to honourable offices, by the citizens of Paris, under the eye, and with the approbation of the National Assembly. See the public prints of the month of 1790.

‡ In the Chapter on Appeals, Ch. IV. § 3.

ing which, see a preceding chapter (Ch. IV. *Of Appeals*, § 3.)

These reductions being effected, then, and not till then, is the time for *indemnification*. Annihilate what can be annihilated; remove from the shoulders of the individual to those of the public, that part of the burden which must be borne by somebody.

Indemnification, it may be observed, is not complete unless it extends to loss of time: but this part of it is not necessary, and would in a certain point of view be dangerous. This occupation being less irksome than most others, people of all classes would be glad to engage in it; and the advantage they would find of employing their time this way rather than in their natural and more laborious calling, would be a source of inordinate expense, and a sort of premium for litigation and delay. To encourage individuals in taking the business out of the hands of a public officer who has been bred to it, can hardly be of use. The great, if not sole use of the open system, is its capacity of affording a spur and a check to the power of that officer upon extraordinary occasions. The working classe, who compose the great bulk of the community, would in general, by reason of their ignorance, be manifestly unfit for such a charge: nor is it natural that a man of that description should wish to take the business out of the hands of a person so much better qualified to perform it, unless with some improper view. But if a man whose education has fitted him for the task, and whose purse can afford to make the public a present of his time, should be willing to take the burden upon himself without any additional expense to the community, why hinder him?

From the notion of indemnification comes the custom of giving what is called *costs*. This, if when obtained it were equal to the expense, which in general it is not, nor indeed without great danger of abuse can well be made, would still be very far from adequate. Remoteness and uncertainty concur in diminishing its apparent, and under the English system perhaps still more its real, value. It is given — when? After the prosecution is gone through. And then on what conditions? Provided the event has been successful: — provided the substance of the defendant is sufficient to defray it: — provided the expenses of defence have not absorbed that substance: — and provided his endeavours to withdraw it out of the reach of seizure have not been attended with effect. What if he be known to have nothing? The value of this indemnification is then in the same case: but in this case are the bulk of men.*

An encouragement that applies to both functions at once, is of the negative cast; the avoiding to clog the former of them with the obligation of adding to it the latter. To compel the informer to take upon him the task of prosecution, is in other words to reject information in all cases where information is to be had from those only whom it does not suit to prosecute.

This forced conjunction counteracts, in a variety of other shapes, the ends of justice: it renders the execution of the law in some instances less certain than it would be, in others more severe than it need be, and in both cases to the public more expensive. Leave it optional, paying the informer only as informer, and easing him of the expense

* As to the English law, in some instances it gives costs, in others not: but the costs, when it does give them, are *taxed* costs: and wide is the difference between taxed costs and real. To obviate the deficiency, in some instances it gives double, in others as far as treble costs: but judges, setting themselves above law, have turned this providence into waste paper. Divines have one sort of arithmetic: lawyers have another. In the ecclesiastical, three tell but for one: in the legal, they rise to one and a half.

What, again, are the cases in which costs are mostly given? Cases of offences prosecuted by *qui tam* and other penal actions, in which the king is not named as plaintiff: to which head belong a large denomination of offences of a purely public nature; mostly of comparatively small importance. What are those in which costs are never given?[a] Cases termed in law-jargon *felonies*: consisting principally of thefts, robberies, murders, and other private offences, which, by reason of the magnitude of the mischief, are raised to the rank of public ones. This for a sample: for the single subject of *costs*, and that treated but partially, has furnished out a volume. Whence this difference? Because in cases of the former stamp, there being no private interest to form a natural inducement, if the factitious discouragement were not thus far removed, there would be no hope of finding prosecutors: in the other, the injury coming home to individuals, the law trusts to their paying thus dear for vengeance. Under the reason found by Blackstone for denying to the injured individual every branch of satisfaction except this melancholy and barren one, indemnification may doubtless be included with as much propriety as any other. Satisfaction in these cases ought not to be looked for by the injured, "the satisfaction to the community" (that is, the satisfaction of seeing a man hanged or transported) "being so very great." [Comm. IV. 1.] When a man has money due to him, is it then really the same thing to him whether he himself gets it, or the exchequer? Try the invention upon the authors: assign over in like manner to the exchequer the fee of the advocate, and the salary of the judge. Another objection is yet behind. In cases of delinquency, the king is prosecutor: and to receive money is "beneath the dignity" of this first magistrate, when he has done any thing to deserve it. But in these same cases the individual injured is prosecutor: therefore he is the king; it is therefore "beneath his dignity" to receive money on this score. Ib. II. 24.

[a] Unless in particular cases, by a particular statute (25 Geo. II. c. 36; 18 Geo. III. c. 19,) in the way of discretionary charity to suppliants.

and charge of prosecution, the purposes of justice are in a variety of ways proportionably served:—

1. Admit a witness, or any other person, to give information without being obliged to prosecute, the reward you offer him may be much less than if that burdensome and hazardous obligation were imposed upon him. Hence a saving to somebody: to the public, if the reward is furnished by the public purse at large: to the public, or to the delinquent, as shall be thought proper, if the substance of the delinquent is the only source from which it is drawn. So much as to what concerns *frugality*.

2. But the less the reward given for evidence, the *less* is the *temptation to perjury* it creates.

3. The *less strong* also of course is the *suspicion of perjury* which it excites; the *less strong* the *objection* it affords *to the credit of the witness* thus engaged. *Rectitude of decision* is thus promoted, the danger of erroneous decision lessened, in a double way: false witnesses are less liable to arise, good witnesses less liable to fail of obtaining the credit which is their due.

On the other hand, if you force your witness to turn prosecutor, and make his reward depend not only upon the success of the prosecution, but upon the solvency of the parties prosecuted, you drive from the service, not only here and there a witness, and here and there a prosecutor, but, where that solvency is dubious, all witnesses and all prosecutors whatever. You give, in short, impunity to poor delinquents, that is, to the great bulk of delinquents.

The public could afford to prosecute in all instances. It would be its own insurer. Its gains in one instance would compensate its expenses in another. This might be the case, even under all that enormity of unnecessary expense which characterizes the English system: much more, were that enormity reduced by the expedients pointed out in a preceding chapter (Ch. IV.) to the standard laid down by nature. Individual adventurers cannot thus insure themselves: they must pick out with care the profitable adventures; the unpromising ones they must let alone. But it is not executing the law in here and there an instance, that will answer the purpose of the law. Upon whom ought its denunciations to be carried into effect? Upon this or that delinquent? No: but upon every one. Upon the wealthy alone; that is, upon the few? No: but upon the poor rather; that is, upon the many.

4. On the other hand, receive information from anybody that will give it, without attempting to saddle him, in return for this service, with the burden of prosecution, you will get an informer without difficulty, in the case of many a poor delinquent, in whose instance you could have got no prosecutor.

5. You may choose in each instance, whether, for the sake of lenity, you will reduce the measure of punishment from its present pitch, or, for the sake of public economy, keep it as it stands. Give up the idea of looking to the delinquent's substance as the sole fund for reward, you may choose whether the present forfeiture shall, for the sake of the delinquent, be reduced, or, for the benefit of the public, be kept entire. As it is, the property of delinquents seems to be looked upon as so much refuse, which may be disposed of without thought, and dissipated without extravagance. The supposition is not altogether so just as it is an easy one. Ten pounds is still ten pounds, in whatever hands it may be to be found. So says economy: nor will compassion regard it as a matter of indifference. The delinquent, though a delinquent, is not the less a member of the community: his suffering is just as much the suffering of the community as that of any other more irreproachable individual. Even were his happiness worth nothing in the account of happiness, his money would not be worth the less in the account of money. If it be not worth saving for his sake, for the sake of the public it will not be less worth taking or keeping than that of a better man.

In this, as in so many other instances, we may see the simple law of liberty effecting that, to which coercion, with all its exuberance of modification, is unequal. Depart from that law on either side, compel informers to become prosecutors, or forbid them, in either case you do mischief, and counteract your own purpose.

The law of England signalizes itself in both these ways. In one class of instances it compels those who inform to prosecute;* in another, by refusing to hear the testimony of

* In the list of private offences raised to the rank of public ones (see above §4, note *, p. 391.) such as, by the punishment annexed to them, it has comprised under the name of *felonies:* theft, defraudment, robbery, homicide, for example. Penal justice is by this means a kind of trap in which honest men are caught, in their pursuit of malefactors. The injurer is ruined by the sentence, the party injured by the expense of purchasing it. Were prudence and knowledge to prevail over passion and ignorance, the law would in these cases, as in so many others, be a dead letter. What scanty measure of efficacy is possessed by the main body of the laws, depends in no small degree on the ignorance in which the people are kept with respect to the abuses of all sorts which compose the system of procedure.

If the offence happens not to have been raised to the rank of felony, though in its nature and mischief not in the smallest degree different from those that are (as is the case with various sorts of thefts and frauds,) the obligation to prosecute does not extend to it.

him who prosecutes, it drives from its service the best species of informer, and with him the voluntary prosecutor, though upon the chance of finding such a servant, no official one being in these instances provided, depends the whole force and efficacy of the law.*

Whence all this discouragement, when encouragement was so much wanted? Not so much from any erroneous views, as from mere oversight and negligence. It has been the natural, and in a manner necessary, effect of the omitting to establish a public prosecutor: a function, under every other system perhaps but the English, provided for with an attention little less regular than that bestowed upon the office of judge. No such provision having been made, individuals must be trepanned into the service of justice, or justice, instead of being so often left undone, would scarce ever be done. In this service, as in others, if you have no regular force on foot, you must put up with volunteers or pressed men, and get them as you can. What in the military service is regarded as abuse, is the regular and sole practice in this branch of the legal. You lie in wait for a man till his peace has received a wound from injury; you catch him intoxicated with passion, and in that state you inlist him into a service, of which, in addition to the burden, he is to bear all the expense, whether he has funds for it, or whether he has none. You single out the distressed: and, as if unmerited suffering had not been sufficiently severe, you load them and squeeze them, not only for the benefit of the public at large, but to help to pamper a swarm of titled idlers, who, without so much as the pretence of stirring a finger, are gorged with wealth, which in France would be deemed excessive if given in recompense for the greatest service.† [See once more the Chapter on Law-Taxes.] Abuse is thus interwoven with abuse: and each gives shade and protection to the other. Out of extortion and peculation grow inaccessible justice and paralytic laws.

Discouragements, as well natural as factitious, once cleared away, the more perfectly they are cleared away, the less need there will be of the expense of positive and factitious encouragements. For obtaining prosecutors, no such expense will be necessary: the official prosecutor, standing bound to charge himself with every prosecution that shall have been put into his hands, answers every purpose. And when mere *information* is all that is wanted — information exempted by nature from trouble and expense, and by plighted secresy from odium and fear of enmity — a very small portion of factitious encouragement, a very moderate *reward*, may in general suffice.

Discouragements, however, being removed, the path of encouragement is smooth and easy. As far as odium is concerned, the former can scarcely have been cleared away, but the latter must in some degree have taken its place. The function of a minister of the law can scarcely be regarded with an eye of pure indifference. If not despised, it will be respected: despised perhaps during the reign of prejudice, respected as soon as reason mounts the throne.

For applying to this purpose the principle of honour, several expedients may be employed: —

1. Stating the title to respect and gratitude, possessed by these not less than other ministers of justice, and, in some such manner as above exemplified, recognizing it in the words of the law itself.

2. Requiring the *judge* to employ his authority to the same effect in a more particular manner in each individual instance, giving thanks in the name of the public to the individual from whom it has been receiving a service of this nature.

3. In cases where the service appeared considerable, and in the course of it any particular share of merit had been displayed, a ticket might be given, entitling the person thus rewarded to a distinguished and particularly commodious seat in the court in which the service had been performed.‡ Here we have *frugality* combined with *exemplarity*, two properties not less to be wished for in the discipline of reward than in that of punishment.‖

4. To this might, in some cases, be substituted or added a medal or medallion, rising in value in proportion to the importance of the service.

5. Pecuniary reward might also be substituted or added, according to circumstances;

* See above, § 5.

† See the Court Calendar for a variety of useless places scattered over almost every branch of the judicial establishment. Which are the most perfectly so, may be seen by the names of lords, or the relatives or dependants or associates of lords — sure indications of enormous pay in return for perfect idleness.

‡ As few or none would be for making use for any constancy of such a seat, the number of such tickets might be considerable, and even indefinite: the holders of them having the advantage of all others for the seats in question, and among themselves taking rank and preference according to priority of dates. The highest reward of this kind would be a seat in the assembly of the legislature.

Restrictions of this nature, though not relative precisely to the same place, nor conferred on the same account, were known among the Athenians under the name of προεδρια; in French, *préséance*. I know no word that exactly answers to it in English. *Precedence* refers not to *sitting*, but to *procession*.

‖ See Introd. to the Principles of Morals and Legislation, Vol. I.

in such manner as to suit the situation of people of different conditions in life. To him whom indigence has sunk below the sphere of honour, money might be given alone: to one not so high as to be above money, yet too high to hazard honour in pursuit of it, money and honour might be given in conjunction: while a man, to whose dignity it would seem a debasement to stoop for money on such terms, might waive altogether the vulgar inducement, and receive the honorary recompense in all its purity Thus diversified, the encouragement would, in one or other of its branches, be upon a level with every station, and match with every taste.

To the rendering the service of the laws in this instance an honourable service, one condition is indeed necessary, which is, that the laws themselves be not such as it would be dishonourable to make. The expedient therefore will not serve where the law itself is but the tool of despotism. It is only on a free soil that it can manifest its full virtue. It consists not with the blind and dastardly policy of sleeping laws. It is incompatible with that almost equally shameful negligence which suffers the body of the laws to remain clogged and enfeebled with a heap of obsolete and confessedly useless matter, which, so far from wishing to see brought into activity, no man would wish, nor, but for sluggishness and panic terrors, endure, to see exist. Honour can scarcely be expected to lend its sanction to the support of establishments in which abuse is neither avoided in practice, nor so much as disclaimed in principle. What if, instead of being disclaimed, it be openly professed? Honour will with difficulty be brought to lend its sanction to revenue, where the treasure collected in enormous heaps from the labour of all, is styled the property of one, and converted in such large proportion into the wages of corruption, or pampered idleness, or unnecessary service. In France, where law is, in the language of plain truth, and not in the jargon of fiction, the expression of the general will, and where profusion, if it exist, will be the work of honest oversight, not of knavish system, honour may be given with as little scruple to the occasional as to the constant ministers of justice.

Where the service of the laws, instead of attracting odium, is attended with honour, secresy, the other remedy against odium, will be the less necessary. It will then only be recurred to, when private enmity happens to be an object of serious apprehension: and that will be the case only here and there by accident.

Factitious encouragement is not only not always necessary to the execution of the laws, but, unless applied with due attention to human feelings, it may counteract the design instead of forwarding it. Such is the case, where bare *indemnification* from expense, or even an allowance short of such indemnification, is given under the name of *reward*: such again is the case, where *pecuniary* reward is given alone, without any mixture of *honorary*, and without the capacity of being exchanged for honorary.

It is the nature of money, when given in the character of a reward, and in a proportion not suited to the pecuniary circumstances of him to whom it is offered, to contract a dishonourable tinge: nor is anything more common than to see the repulsive quality of the alloy an overmatch for the attractive quality of the pecuniary advantage. In this way, while you are applying encouragement in name, you may be applying not only no encouragement, but actual discouragement, in effect. This is universally the case, where the costs of prosecution are thrown upon the informer, while the chance of the reward is not worth the certainty of the expense. While seeming to invite, you actually drive away, men of every description. Those who profess to disdain money cannot serve you, because money is offered them, and nothing else: those who would be glad of money will not serve you, because the money you offer them is worth nothing. Are examples wanted? The English statute-book is full of them.

As to what concerns witnesses as such, considered apart from the contingency of their appearing in the character of informer or that of prosecutor, the means to be taken for procuring them, and the question whether on any and what grounds any person ought to be excluded or excused from serving the law in this capacity: these are inquiries which belong, not to the present subject, but to that of procedure.

§ 8. *Differences between the English Attorney-General, the French Attorney-General, and the proposed Pursuer-General.*

To judge from names, the business of prosecuting should stand on the same footing in England as it did in France. In France there is an office which gives to the possessor the title of Attorney-General; so is there in England: but in point of extent, nothing can be more different than their functions. All that the English attorney-general does, was done by the French officer of the same name: but the latter did an infinity of business with which it is not the custom for the former ever to interfere. In a word, in France the attorney-general was the sole prosecutor. Add, to the cases where in England the attorney-general appears as *prosecutor*, those in which private persons act under that name, and those in which the prosecutor is commonly spoken of under the appellation of *informer*, you have a tolerable idea of the function of the attorney-general in France. Numbers

must bear some proportion to duty. In England, the attorney-general has *one* assistant, the solicitor-general; and for any real necessity there is for his service, even that one might be spared. In France, the attorney-general was *Legion*. The head magistrate of that name had either a deputy (*substitut*) or a namesake, in every court of criminal jurisdiction. In that country, judges themselves were scarce looked upon as more necessary than public prosecutors.

In France, this officer was the servant of the public, and the standing instrument of penal justice: if he served the king, it was by accident, as he might serve any other individual. In England, he is the servant of the king: he is the instrument of the king's passions: or, to speak with propriety (for the king has no passions,) of the passions of the minister. In this capacity, that the public may derive a benefit from his service is not to be denied: but so may it from that of the law-agent of any other individual. The principal object is the service of the king: I mean always, of the minister. The service, if any be done to the public, comes in collaterally and by accident. In treason, and all other offences in which the king is the party more immediately injured, there would indeed be no want of his activity: but treason happily is not the offence of every day. In offences against the revenue you see now and then some marks of his existence, because the whole revenue of the public is called, what so enormous a share of it really is, the revenue of the king. But here the activity of this officer is necessarily circumscribed by the practice of voluntary prosecutors under the name of informers, and the natural incapacity he is under of transacting any business which has not the metropolis for its scene.

But the most conspicuous, and not the least active, of his functions, is pure unmixed mischief: punishing where prevention is as impracticable as it is undesirable: sacrificing to the passions of individuals one pretended delinquent out of ten thousand, without selection and without rule: *destroying*, as far as it can be destroyed, by efforts as impotent to every public purpose as they are distressful to individuals, *the liberty of the press*: contributing what depends upon him towards smothering the public voice, and setting the trustees of the people above the controul and censure of their principals: and punishing men for disobedience to laws which have no existence. Here he is by engagement the servant of the king, and too often by loan the servant of those who ought to be the servants of the people. Can he too be on this account styled the servant of the people? Yes; if the executioner can be called the servant of the victim on whom he performs his office.

As to the laws on which depend liberty, property, personal safety, life, honour—in short, almost the whole body of the laws to which the welfare of the community is attached, his office might as well have no existence, for any benefit this most important class of the laws is in use to reap from it.

How should they? Of himself, he has no power: he has no funds at his disposal. He is not in fact a minister of justice, any more than any private attorney is a minister of justice. The treasury-board are his clients: the treasury-board are his masters. Except his uniting in some sort the unnaturally-separated functions of the advocate and the attorney, he is nothing more than an advocate whom the managers of the king's money have engaged to employ in causes of a certain description during pleasure. At his own expense he may indeed prosecute any body and for anything, just as any other advocate or attorney, just as any other man, might do: but why should he, any more than any other man? In instituting prosecutions he has no greater share of authority, no right more extensive, than every other man: not only he, but his clients, the managers of the king's money, have no more. What distinguishes them in this particular from any private man is, not their having more authority, but their having the disposal of more money. The king may employ an attorney, just as anybody else may. What distinguishes this attorney of his from other men's attorneys, is, that his client has more money to employ in law than anybody else.

What this great officer possesses of peculiar and real power is all sheer abuse; which, however, like so many other abuses, may by accident have its good effects, by operating as a corrective to some greater abuse: I mean, the power of issuing *noli prosequi*'s; the power of stopping prosecutions when instituted by individuals. If, in the countless multitude of the laws, there be any which are not fit to be executed, that is, which ought not to exist (and multitudes of such there doubtless are,) this power may in so far be capable of being put to a good use. If, among the laws fit in general to be executed, there be any which in certain particular cases it were better not to execute, so far likewise the power is capable of being put to a good use. But what, in cases like these, is the proper course? Keeping on foot this power? No: but making the requisite alteration in the body of the laws. Abolish those of the first-mentioned description: to those of the latter, add the requisite exceptive clauses. In the laws lies the disease: in the laws lies the proper and only effectual remedy. As to him, what can be expected from him, with his precarious palliative? To which of all these distempered parts will he apply it? To

this one, to that one, or to neither? Who will say? It depends upon the attorney-general of the moment, and upon the momentary humour of the attorney-general: upon the humour of a mercenary, whom no impossibility excludes from understanding the true interest of the public in its various branches, but whose interest and occupations have not been of such a nature as to present him any peculiar occasion, or any peculiar inducement, to understand it. Why do I say the attorney-general? It depends jointly upon the humour and supposed interest of this officer, and his superior the minister; whose caprices and whose passions club together in the dark, in unknown and inscrutable proportions, to compose this work of despotism. While a *dispensing power*, so calling itself, is regarded with so much horror, is it so sure that the same thing, under this other name, will never be made use of to any other purpose than a good one? Is it so sure that, in the filling of this office, no minister will ever pitch upon a lawyer who is not wiser than the laws, or whose probity is not equal to his wisdom? And were this enormous power as incapable, as it is susceptible, of being abused, what to the public would be its value?*

§ 9. *Defender-General — Necessity of the Office.*

Is the office of defender-general a needless one? is it much less indispensable than that of pursuer-general? can it be right that there should be always somebody for the prosecution of delinquency, and that there should never be anybody for the defence of innocence?

In England, as in France, the plan of policy on this head remains still in the same state in which it was first traced out by the injustice and insensibility of primeval barbarism. Prosecution was not only the principal object of government, but the sole one: it filled the eye, and bounded the horizon, of despotism. That object provided for, the defendant was to take care of himself as he could. It was the interest of the king that those who were guilty should be punished: the mischief sustained by the offence was his in some cases: the profit to be made out of the punishment might be made his in all cases. It was no interest of the king's, that those who were not guilty should escape. By their punishment he might get something: by their acquittal he could get nothing: their acquittal was therefore *their* concern, and none of his: they were accordingly left to provide for it as they could: and it was *God's* business, if such were his pleasure, "*to send them a good deliverance.*" In the eye of common sense, of justice, and of humanity, there are two parties to every cause: but depotism acknowledges but one.

In the pursuer-general you have a magistrate ready to be charged with the cause of a plaintiff too poor and too friendless to find another advocate. But may not a poor man have a claim to *defend* himself against, as well as a claim to *make?* And under a penal prosecution, is the poor man, of all others, to have none to help him.

* Here, as elsewhere, let us blame establishments, which alone, and not individuals, are justly blameable: for individuals are what the laws have made them. Rare and thankless justice! for the objects of jealousy and enmity are individuals; establishments, in spite of all their faults, often by reason of their very faults, the objects of fondness and admiration:—and that in proportion to their antiquity; that is, to the inexperience and ignorance of their authors. The attorney-general, were his love of the public ever so passionate, could scarcely be more the servant of the public than he is. Paid, not by salary, but by fees, he cannot stir a step beyond the ordinary track of office, without subjecting himself to imputations, which could not be pronounced unreasonable. In an officer thus circumstanced, increase of duty would be increase of peculation. Prosecute, he cannot, of himself, in any case, but at the expense of his fortune: promote an order to himself to prosecute, he cannot, at least in any novel instance, but at the risk of his reputation.

EMANCIPATE YOUR COLONIES!

ADDRESSED TO THE

NATIONAL CONVENTION OF FRANCE,

ANNO 1793.

SHEWING THE USELESSNESS AND MISCHIEVOUSNESS OF DISTANT DEPENDENCIES

TO AN

EUROPEAN STATE

BY JEREMY BENTHAM,

OF LINCOLN'S INN, ESQ.

FIRST PUBLISHED FOR SALE IN 1830.

EMANCIPATE YOUR COLONIES!

ADDRESSED TO THE

NATIONAL CONVENTION OF FRANCE.

Jeremy Bentham to the National Convention of France.

YOUR predecessors made me a French Citizen: hear me speak like one. War thickens round you: I will show you a vast resource: — EMANCIPATE YOUR COLONIES. You start: Hear and you will be reconciled. I say again, *Emancipate your Colonies.* Justice, consistency, policy, economy, honour, generosity, all demand it of you: all this you shall see. Conquer, you are still but running the race of vulgar ambition: emancipate, you strike out a new path to glory. Conquer, it is by your armies: emancipate, the conquest is your own, and made over yourselves. To give freedom at the expense of others, is but conquest in disguise: to rise superior to conquerors, the sacrifice must be your own. — Reasons you will not find wanting, if you will hear them: some more pressing than you might wish. What is least pleasant among them may pay you best for hearing it. Were it ever so unpleasant, better hear it while it is yet time, than when it is too late, and from one friend, than from a host of enemies. If you are kings, you will hear nothing but flattery; if you are republicans, you will bear rugged truths.

I begin with *justice:* it stands foremost in your thoughts. And are you yet to learn, that on this ground the question is already judged? — that you at least have judged it, and given judgment against yourselves? — You abhor tyranny: you abhor it in the lump not less than in detail: you abhor the subjection of one nation to another: you call it slavery. You gave sentence in the case of Britain against her colonies: have you so soon forgot that sentence? — have you so soon forgot the school in which you served your apprenticeship to freedom?

You choose your own government: why are not other people to choose theirs? Do you seriously mean to govern the world, and do you call that *liberty?* What is become of the rights of men? Are you the only men who have rights? Alas! my fellow citizens, have you two measures?

" Oh! but they are but a part of the empire, and a part must be governed by the whole." — Part of the empire, say you? Yes, in point of fact, they certainly are, or at least were. Yes: so was New-York a part of the British empire, while the British army garrisoned it: so were Longwy and Verdun parts of the Prussian or the Austrian empire t'other day. That you have, or at least had *possession* of them, is out of dispute: the question is, whether you now ought to have it?

Yes, you have, or had it: but whence came it to you? Whence, but from the hand of despotism. Think how you have dealt by them. One common Bastile inclosed them and you. You knock down the jailor, you let yourselves out, you keep them in, and put yourselves into his place. You destroy the criminal, and you reap the profit, I mean always what seems to you profit, of the crime.

" Oh, but they will send deputies; and those deputies will govern us, as much as we govern them." Illusion! What is that but doubling the mischief, instead of lessening it? To give yourselves a pretence for governing a million or two of strangers, you admit half a dozen. To govern a million or two of people you don't care about, you admit half a dozen people who don't care about you. To govern a set of people whose business you know nothing about, you encumber yourselves with half a dozen starers who know nothing about yours. Is this fraternity? — is this liberty and equality? Open domination would be a less grievance. Were I an American, I had rather not be represented at all, than represented thus. If tyranny must come, let it come without a mask. " Oh, but information" True, it must be had; but to give information, must a man possess a vote?

Frenchmen, how would you like a parliament of ours to govern you, you sending six members to it? London is not a third part so far from Paris as London from the Orkneys, or Paris from Perpignan. You start — think then, what may be the feelings of the colonists. Are they Frenchmen? — they will feel like Frenchmen. Are they not Frenchmen? — then where is your right to govern them?

Is equality what you want? I will tell you how to make it. As often as France sends commissaries with fleets and armies to govern the colonies, let the colonies send commissaries with equal fleets and armies to govern France.

What are a thousand such pleas to the purpose? Let us leave imagination, and consult feelings. Is it for their advantage to be governed by you rather than by themselves? Is it for your advantage to govern them rather than leave them to themselves.

Is it then for their advantage to be governed by a people who never know, nor ever can know, either their inclinations or their wants? What is it you ever can know about them? The wishes they entertain? the wants they labour under? No such thing; but the wishes they entertained, the wants they laboured under, two months ago: wishes that may have changed, and for the best reasons: wants that may have been relieved, or become unrelievable. Do they apply to you for justice? Truth is unattainable for want of evidence: You get not a tenth part, perhaps, of the witnesses you ought to have, and those perhaps only on one side. Do they ask succours of you? You put yourselves to immense expense: You fit out an armament, and when it arrives, it finds nothing to be done; the party to whom you send it are either conquerors or conquered.—Do they want subsistence? Before your supply reaches them, they are starved. No negligence could put them in a situation so helpless as that in which, so long as they continue dependent on you, the nature of things has fixed them, in spite of all your solicitude.

Solicitude, did I say? How can they expect any such thing? What care you, or what can you care, about them? what do you know about them? What picture can you so much as form to yourselves of the country? what conception can you frame to yourselves of manners and modes of life so different from your own? When will you ever see them? when will they ever see you? If they suffer, will their cries ever wound your ears? will their wretchedness ever meet your eyes? What time have you to think about them? Pressed by so many important objects that are at your door, how uninteresting will be the tale that comes from St. Domingo or Martinique?

What is it you want to govern [illegible] for? What, but to monopolize and c[illegible]p their trade? What is it they can want you to govern them for? Defence? Their only danger is from you.

Do they like to be governed by you? Ask them, and you will know. Yet why ask them, as if you did not know? They may be better pleased to be governed by you than by anybody else; but is it possible they should not be still better pleased to be governed by themselves? A minority among them might choose rather to be governed by you than by their antagonists, the majority: but is it for you to protect minorities? A majority, which did not feel itself so strong as it could wish, might wish to borrow a little strength of you:—but for the loan of a moment, would you exact a perpetual annuity of servitude?

"Oh, but they are aristocrats." Are they so? Then I am sure you have no right to govern them: then I am sure it is not their interest to be governed by you: then I am sure it is not your interest to govern them. Are they aristocrats? they hate you. Are they aristocrats? you hate them. For what would you wish to govern a people who hate you? Will they hate you the less for governing them? Are a people the happier for being governed by those they hate? If so, send for the duke of Brunswick, and seat him on your throne. For what can you wish to govern a people whom you hate? Is it for the pleasure of making them miserable? Is not this copying the Fredericks and the Francises?—is not this being aristocrats, and aristocrats with a vengeance?

But why deal in suppositions and put cases? Two colonies, Martinico and Guadalupe, have already pronounced the separation. Has that satisfied you? I am afraid rather it has irritated you. They have shaken off the yoke; and you have decreed an armament to fasten it on again. You are playing over again our old game. Democrats in Europe, you are aristocrats in America. What is this to end in? If you will not be good citizens and good Frenchmen, be good neighbours and good allies. When you have conquered Martinico and Guadalupe, conquer the United States, and give them back to Britain.

"Oh, but the Capets will get hold of them." So much the better. Why not let the Capets go to America? Europe would then be rid of them. Are they bad neighbours? rejoice that they are at a distance. Why should not the Capets even reign, since there are those that choose to be governed by them? why should not even the Capets reign, while it is in another hemisphere? Such aristocrats as you do not kill, you yourselves talk of transporting. What do you mean to make of them when transported? Slaves? If you must have slaves, keep them rather at home, where they will be more out-numbered by freeman, and kept in better order. If you mean they should be transported without being enslaved, why not let them transport themselves?

Does your delicacy forbid your communicating with the degraded despots? You need not communicate with them. your communication is with the people. You take the people as you find them: you give them to themselves: and if afterwards they choose to

give themselves to anybody else, it is their doing: you neither need, nor ought to have any concern in it.

"Oh, but the good citizens! what will become of the good citizens?" What will become of them? Their fate depends upon yourselves. Give up your dominion, you may save them: fight for it, you destroy them. Secure, if you can do it without force, a fair emission of the wishes of all the citizens: if what you call the good citizens are the majority, they will govern; if a minority, they neither will nor ought to govern: but you may give them safety if you please. This you may do for them at any rate, whether those in whose hands you find them submit to collect the sense of the majority or refuse it. Conclude not, that if you cease to maintain tyranny, you have no power to insure justice. Think not, that those who resist oppression must be deaf to kindness. Set the example of justice: you who, if you preferred destruction, might use force, set the example of justice: the most perverse will be ashamed not to follow it. How different are the same words from a tyrant and from a benefactor! Abhorrence and suspicion poison them in the one case: love and confidence sweeten them in the other.

Would you see your justice shine with unrivalled lustre? Call in commissaries from some other nation, and add them to your own. Do this; do it of your own accord: it will be certain you can mean nothing but justice. The cool and unbiassed sentiments of these strangers will be a guide to the judgment, and a check upon the affections, of your own delegates. They will be pledges and evidence, to you and to the world, of the probity of their colleagues. Think not that I mean to propose to you to crouch to the insolence of armed mediation, or to adopt the abominations of the guaranteeing system: think not that I am for acting over again the tragedies of Poland, Holland, or Geneva. The business to be settled is—not constitution but administration: not perpetual law but temporary arrangement. The mediators come only because you bid them, and they come unarmed.

Thus you *may* save the good citizens: for you may save everybody. Keep to the plan of domination, you save nobody. The first victims are the very persons you are so solicitous to save: so at least it is in two great islands: for there they are already overpowered. Then comes your armament, with double destruction at its heels: if it is repulsed, you are disappointed and disgraced; if it conquers, then come beheadings and confiscations. Such are the two plans. Which, then, do you choose? Universal safety, or reciprocal destruction?—abhorrence, or admiration?—the curses of your friends, or the benedictions of your enemies?

But suppose the colonists unanimous, and unanimous in your favour, ought you even then to keep them? By no means: they are a million or two: you are five or six-and-twenty millions. Think not, that because I mentioned them first, it is for their sake in the first place that I wish to see them free. No: it is the mischief you do yourselves by maintaining this unnatural domination; it is the mischief to the six-and-twenty millions that occupies a much higher place in my thoughts.

What if colonies, as they are called, are worth nothing to you? What if they are worth less than nothing? If you prefer injustice (pardon me the supposition,) are you so fond of it as to commit it to your own loss?

What, then, should they be worth to you, but by yielding a surplus of revenue, beyond what is necessary for their own maintenance and defence? Do you, can you, get any such surplus from them? If you do, you plunder them, and violate your own principles. But you neither do, nor ever have done, nor intend to do, nor ever can do, any such thing.

The expense of the peace establishment you may know: and I much question whether any revenue you can draw from them can so much as equal that expense. But the expense of defence in time of war you do not know, nor ever can know. It is no less than the expense of a navy capable of overawing that of Britain.

"Oh, but the produce of our colonies is worth so many millions a-year: it has been, and when quiet is restored will be again: all this, if we were to give up our colonies, we should lose." Illusion! The income of your colonies your income? Just as much as that of Britain is your income. Have colonists, then, no properties? If they are theirs, how are they yours? Are they theirs and yours at the same time? Impossible. If out of a hundred millions they spend or lay up a hundred millions, pray how much is there left for you? Can you take a penny of that income more than they choose to give you? or would you, if you could? We have no such pretension, unless it be over conquered colonies, in our land of what you call imperfect liberty.

"Oh, but of this income of theirs, a great part centres here: it comes to buy our goods: it constitutes a great part of our trade—all this at least we should lose." Another illusion[illegible]st you govern a people in order to sell [illegible]goods to them? Is there that people upon earth who do not buy goods of you? You sell goods to Britain, don't you? And do you govern Britain? When a colonist sends you sugar, does he give it you for nothing? Does not he make you give him value for it? Give value for it then, and you will have it still. When he is his own master, will the sugar he cannot use be less a burthen to him than it is now? Will he be

less in want of whatever it is he now buys with sugar? What you now sell to him, suppose you were to sell it to him no longer, would you be the poorer? Is there nobody else that would buy it? Is it worth nothing? What is it to you to whom you sell your goods? When do you know beforehand whether it is John or Thomas that will buy, or that will consume your goods? And if you did, what would you be the better? Are you then really afraid of not finding any thing to produce that shall find purchasers? Is it that what you can find to sell is worth nothing, and what you want to buy worth everything? If such be your danger, what is your colonist's? What you want of him is luxury: what he wants of you is existence. Suppose he gets the article, whatever it be, corn or any thing; suppose he gets it for the moment from some other shop instead of yours. Is there a grain the more corn in the world to sell in consequence of this change of his, or a single mouth the less that wants corn, and has money or money's worth to give for it? By buying at that other shop, does not he empty that shop of so much corn, which some other customer, who would otherwise have got it at that shop, must now directly or indirectly get of you?

I will tell you a great and important, though too much neglected truth—TRADE IS THE CHILD OF CAPITAL: In proportion to the quantity of capital a country has at its disposal, will, in every country, be the quantity of its trade. While you have no more capital employed in trade than you have, all the power on earth cannot give you more trade: while you have the capital you have, all the power upon earth cannot prevent your having the trade you have. It may take one shape or another shape; it may give you more foreign goods to consume, or more home goods; it may give you more of one sort of goods, or more of another; but the quantity and value of the goods of all sorts it gives you will always be the same, without any difference which it is possible to ascertain, or worth while to think about. I am a merchant; I have a capital of £10,000 in trade. Suppose the whole Spanish West Indies laid open to me; could I carry on more trade with my £10,000 than I do now? Suppose the French West Indies shut against me; would my £10,000 be worth nothing? If every foreign market were shut up against me without exception, even then would my £10,000 be worth nothing? If there were no sugar to be bought, there is at any rate land to be improved. If a hundred pounds worth of sugar be more valuable than a hundred pounds worth of corn, butcher's meat, wine, or oil, still corn, butcher's meat, wine, and oil, are not absolutely without their value. If, article after article, you were driven out of every article of your foreign trade, the worst that could happen to you would be the being reduced to lay out so much more than otherwise you would have laid out in the improvement of your land. The supposition is imaginary and impossible, but if it were true, is there any thing in it so horrible?

Yes; it is *quantity of capital*, not *extent of market*, that determines the quantity of trade. Open a new market, you do not, unless by accident, increase the sum of trade. Shut up an old market, you do not, unless by accident, or for the moment, diminish the sum of trade. In what case, then, is the sum of trade increased by a new market? If the rate of clear profit upon the capital employed in the new trade is greater than it would have been in any old one, and not otherwise. But the existence of this extra profit is always taken for granted, never proved. It may indeed be true by accident: but another thing is taken for granted which is never true; it is, that the *whole* of the profit made upon the capital which, instead of being employed in some old trade, is employed in this new one, is so much addition to the sum of national profit that would otherwise have been made: what is only *transferred* is considered as *created*. If after making 12 per cent. upon a capital of £10,000 in an old trade, a man made but 10 per cent. upon the same capital in a new trade, who does not see, that instead of gaining £1200 a-year, he, and through him the nation he belongs to, loses £200 by the change: and so it is, if instead of one such merchant, there were a hundred. Instead of this £200 a-year loss, your *comités de commerce* and boards of trade set down to the national account £1000 a-year gain: especially if it be to a very distant and little known part of the world, such as a southern whale-fishery, a revolted Spanish colony, or a Nootka Sound: and it is well if they do not set down the whole capital of £10,000 as gain into the bargain.

"Oh, but we give ourselves a monopoly of their produce, and so we get it cheaper than we should otherwise, and so we make them pay us for governing them." Not you, indeed; not a penny: the attempt is iniquitous, and the profit an illusion.

The attempt, I say, is iniquitous: it is an aristocratical abomination: it is a cluster of aristocratical abominations: it is iniquitous towards them; but much more as among yourselves.

Abomination the 1st. Liberty, property, and equality violated on the part of a large class of citizens (the colonists) by preventing them from carrying their goods to the markets which it is supposed would be most advantageous to them, and thence keeping from them so much as it is supposed they would otherwise acquire.

Abomination 2d. One part of a nation

(the people of France) taxed to raise money to maintain by force the restraints so imposed upon another part of the nation (the colonists.)

Abomination 3d. The poor, who after all are unable to buy sugar — the poor in France, taxed in order to pay the rich for eating it. Necessaries abridged for the support of luxury. The burthen falls upon the rich and poor in common: the benefit is shared exclusively by the rich.

The injustice is not such in appearance only: as it would be, if what is thus taken or meant to be taken from the colonists went to make revenue: it would then be only a mode of taxation. In France (it might then be said) people are taxed one way, in the colonies another: the only question would then be about the eligibility of the mode. But revenue is here out of the case: nothing goes to the nation in common; everything goes to individuals: if it is a tax, it is a tax the produce of which is squandered away before collection; it is a tax the produce of which, instead of being gathered into the treasury, is given away to sugar-eaters.

But even as to sugar-eaters, the profit, I say, is an illusion. For does the monopoly you give yourselves against the growers of sugar so much as keep the price of sugar lower than it would be otherwise? Not a sixpence. Lower than the price at which the commodity is kept by the average rate of profit on trade in general, no monopoly can reduce the price of this commodity any more than of any other, for any length of time: you may keep your subjects from selling their sugars elsewhere, but you cannot force them to raise it for you at a loss. Lower than this natural price, no monopoly can ever keep it: down to this price, natural competition cannot fail to reduce it, sooner or later, without monopoly. Customers remaining as they were, without increase of the number of traders there can be no reduction of price. Monopoly, that is, exclusion of customers, has certainly no tendency to produce increase of the number of traders: it may pinch the profits of those whom it first falls upon, but that is not the way to invite others. Monopoly, accordingly, as far as it does anything, produces mischief without remedy. High prices, on the other hand — the mischief against which monopoly is employed as a remedy — high prices, produced by competition among customers, cannot in any degree produce inconvenience, without laying a proportionate foundation for the cure. From high profits in trade comes influx of traders, from influx of traders competition among traders, from competition among traders reduction of prices, till the rate of profit in the trade in question is brought down to the same level as in others.

Were it possible for monopoly to keep prices lower than they would be otherwise, would it be possible for anybody to tell how much lower, and how many sixpences a-year were saved to sugar-eaters by so many millions imposed upon the people? No, never: for since, where the monopoly subsists against the producers, there is nothing but the monopoly to prevent accession of, and competition among the producers, competition runs along with the monopoly, and to prove that any part of the effect is produced by the monopoly and not by the competition, is impossible.

"Oh, but we have not done with them yet. We give ourselves another monopoly: we give ourselves the monopoly of their custom, and so we make them buy things dearer of us than they would otherwise, besides buying things of us which otherwise they would buy of other people; and so we make them pay us for governing them." Mere illusion! In the articles which you can make better and cheaper than foreigners can, which you can furnish them with upon better terms than foreigners can, not a penny do you get in consequence of the monopoly, more than you would without it. You prevent their buying their goods of any body but your own people: true; but what does this signify? You do not force them to buy of any one or more of your own people to the exclusion of the rest. Your own people, then, have still the faculty of underselling one another without stint, and they have the same inducement to exercise that faculty under the monopoly, as they would have without it. It is still the competition that sets the price. In this case as in the other, the monopoly is a chip in porridge. It is still the proportion of the profit of these branches of trade to the average rate of profit in trade that regulates this competition: it is still the quantity of the capital which there is to be employed in trade that regulates the average rate of profit in trade.

In the instance of such articles as you can *not* make better or cheaper than foreigners can, in the instance of articles which you can *not* furnish them with on better terms than foreigners can, it is still the same illusion, though perhaps not quite so transparent. Not a penny does the nation get (I mean the total number of individuals concerned in productive industry of all kinds) not a penny does the nation get by this preference of bad articles to good ones, more than it would otherwise. In France, any more than anywhere else, people do not get more by the goods they produce than if there were no such monopoly: for if the rate of profit in the articles thus favoured were higher one moment, competition would pull it down the next. All that results from the monopoly you thus give yourselves of the custom of your colonies is, that goods of all sorts are somewhat worse for the money

all over the world than they would be otherwise. People in France are engaged to produce, for the consumption of the French colonies, goods in which they succeed not so well as England for example, instead of producing for their own consumption, or that of some other nation, goods in which they succeed better than England. People in England, on the other hand, being so far kept from producing the goods they could have succeeded best in, are in so far turned aside to the production of goods in which they do not succeed so well: and thus it is all the world over. The happiness of mankind is not much impaired, perhaps, by the difference between wearing goods of one pattern, and goods of another: but, though much is not lost perhaps to anybody by the arrangement, what is certain is, that nothing is gained by it to anybody, and particularly to France.

Will you believe experience? Turn to the United States. Before the separation, Britain had the monopoly of their trade: upon the separation, of course she lost it. How much less is their trade with Britain now than then? On the contrary, it is much greater.

All this while, is not the monopoly against the colonists clogged with a *counter-monopoly?* To make amends to the colonists for their being excluded from other markets, are not the people in France forbidden to take colony produce from other colonies, though they could get it ever so much cheaper? If so, would not the benefit to France, if there were any, from the supposed gainful monopoly, be outweighed by the burthen of that which is acknowledged to be burthensome? Yes — the benefit is imaginary, and it is clogged with a burthen which is real.

Monopoly, therefore, and counter-monopoly taken together, sugar must come the dearer to sugar-eaters, instead of cheaper: to a certain degree for a constancy; and much more occasionally, when the dearness occasioned by a failure of crops in the French colonies, is by the counter-monopoly against France prevented from being relieved by imports from other colonies, where crops have been more favourable.

If monopoly favoured *cheapness*, which it does not, it would favour it to the neglect of another object, *steadiness* of price, which is of more importance. It is not a man's not having sugar to eat that distresses him: Crœsus, Apicius, Heliogabalus, had no sugar to eat: what distresses a man is his not being able to get what he has been used to, or not so much of it as he has been used to. The monopoly against the French colonies, were it to contribute ever so much to the cheapness of the price, could contribute nothing to the steadiness of it: on the contrary, in consequence of the counter-monopoly it is clogged with, its tendency is to perpetuate the opposite inconvenience, variation. Any monopoly which France gives herself against her colonies will not prevent any of those accidents in consequence of which sugar is produced in less abundance in those colonies than at others: and when it is scarce there, the monopoly against France will prevent France from getting from other places where it is to be had cheaper.

How much dearer is sugar in countries which have no colonies than in those which have? Let those inquire who think it worth the while. They will then see the utmost which in any supposition it would be possible for the body of sugar-eaters in France to lose. Not that this loss could amount to anything like the above difference: for, in as far as those countries get their sugar from monopolized colonies, which must be through the medium of some monopolizing country, they get it loaded with the occasional dearth produced thus by the effects of the counter-monopoly above mentioned, and loaded more or less with constant import taxes, besides the expense of circuitous freight and multiplied merchant's profit.

May not monopoly, then, *force down* prices? Most certainly. Will it not, then, *keep them* down? By no means. If I have goods I can make no use of, and there is but one man in the world that I can sell them to, sooner than not sell them, though they cost me a hundred pounds to make, I will sell them for sixpence. Thus monopoly will beat down prices. But shall I go on making them and selling them at that rate? Not if I am in my senses. Thus monopoly will not keep down prices. Hence then comes all the error in favour of monopolies — from not attending to the difference between forcing down prices and keeping them down.

When an article is dear, it is by no means a matter of indifference whether it is made so by freedom or by force. Dearth which is natural, is a misfortune: dearth which is created, is a grievance. Suffering takes quite a different colour, when the sense of oppression is mixed with it. Even if the effect of a monopoly is nothing, its inefficiency as a remedy does not take away its malignity as a grievance.

What then do you get by the monopolizing system, take it altogether? You get the credit of this grievance; you get occasional dearth; you get the loss you are at by the armaments you keep up against smuggling; you get the expense of prosecution, and the waste and misery attendant upon fine and confiscation.

"Oh, but the duties upon the colony trade produce revenue to us." I dare say they do: and what then? Must you govern a country in order to tax your trade with it? Is there that country that does not produce revenue to you? You tax your trade with Britain,

don't you? and do you govern Britain? You tax British goods as high as smuggling will permit: could you tax them higher if they came from the colonies?—would you if you could?—would you tax your own subjects higher than you would strangers?

I will show you how you *may* get revenue out of them: I will show you the way, and the only way in which, if you choose iniquity, you may make it profitable. Tax none of their produce, tax none of your imports from them; of all such taxes, every penny is paid by yourselves. Tax your exports to them: tax all your exports to them: tax them as high as smuggling will admit: of all such taxes, every penny is paid by them.

I will show you how much more you could get in this way from them than from foreigners. You could not, it must be confessed, get, unless by accident, more per cent. on what they took from you, than on what foreigners took from you: for smuggling, which limits the rate per cent. you could thus levy upon foreigners, limits in like manner the rate per cent. you could levy upon your vassals. Remote countries like the colonies might indeed afford less facility for smuggling out of France than contiguous countries, and so, the expense of smuggling being the greater, the tax would admit of being set higher without having the productiveness of it destroyed by smuggling: but whatever latitude is thus given, is given, you see, not by alienship but by distance.

You could not, I say, get more per cent. in this way from your vassals, as such, than if they were foreigners; but what you could get from them, is that same *rate* of profit, with greater certainty as to the *extent* of it. Foreigners might quit your market at any time: and would quit it, if, after the tax thus levied upon them, they could not get the goods they want, upon as good terms from you as elsewhere. Your own vassals could not quit your market, except in as far as smuggling would enable them; for by the supposition they have no other. Upon foreigners the tax is an experiment, and what you risk by the experiment is, the temporary distress to individuals proportioned to the decrease, whatever it be, of that branch of trade: for as to the *absolute* sum of trade, or, to speak more distinctly, of national wealth, it suffers nothing, as you have seen, beyond the amount of the *relative* and momentary decrease: so that the whole produce of this tax is so much clear gain to the revenue, for which nothing is paid, or so much as risked, beyond the above-mentioned momentary and contingent distress to individual traders. Upon your own vassals there is nothing for experiment to ascertain: you have them in a jail, and you set what price you please on their existence; only you must keep the door well locked, and if the jail be a large one, this may be no such easy matter. In Guadalupe, Martinico, and St. Domingo, what could the expense amount to—the prisoners all refractory, and making holes and beating down doors and walls, at every opportunity, with people on the outside to help them? Let those calculate who may think it worth their while.

In all this there are no figures—why? because nothing turns upon figures. Figures might show what the *incomes* of your colonists amount to; and what the incomes of your colonists amount to is nothing to you, for they are their incomes, and not yours. Figures might show the amount of your *imports* from your colonies; and it makes nothing to the question; for they do not sell it you without being paid for it, and they would not be the less glad to be paid for it for being free. Figures might show the produce of your *taxes* on those *imports;* and it makes nothing to the question, for you might get it equally whether the producers of those articles were dependent or independent, and it is your own people at home that pay it. Figures might show, what you sold in the way of *exports* to your colonists in this and that shape: and it makes nothing to the question: for consumption, not sale, is the final use of production, and if you did not sell it in that shape, you would sell it or consume it in another. Figures might show you the amount of the *taxes* you levy on those *exports:* and nothing turns upon that amount; for if the price of the article will bear the amount of the tax without the help of such a monopoly as subjection only can insure, you may get it from them when independent as well as from other foreigners, and if it will not, neither will they bear to see it raised so high, nor will you bear to raise it so high, as to pay the expense of a marine capable of blocking up all their ports, and defending so many vast and distant countries against the rival powers, with the inhabitants on their side.

"Oh, but they are a great part of our power." Say rather, *the whole of your weakness.* In your own natural body, you are impregnable; in those unnatural excrescences, you are vulnerable. Are you attacked at home? not a man can you ever get from them; not a sixpence. Are they attacked? they draw upon you for fleets and armies.

If you were resolved to keep them, could you? It may be worth your consideration. Is it not matter of some doubt, even now when you have them to defend only against themselves: can there be a moment's doubt, when the power of Britain is thrown into the scale? Five men of war, I think, or some such matter, you have ordered out to defend them against one another. Ask your minister of the marine, can he spare fifty more to defend them against their protectors? Fifteen thou-

sand are bound for Martinico to fight aristocrats: ask your war-minister whether Custine can spare 30,000 more of his best men to fight Britons.

Do not feed yourselves with illusions. You cannot be everywhere: you cannot do every thing. Your resources, great as they are, have still their limits. The land is yours. But do you think it possible for you to keep it so, and the sea likewise?—the land against every body, and at the same time the sea against Britain? Look back a little. Could Spain, Holland, and America together, save you from the 10th of April? How will it be now? America is neutral. Spain and Holland are against you. Send as many ships as you can, England alone can send double the number, and if that be not sufficient, treble.

"Oh, but times are changed." I dare believe it. What superior bravery can do will be done. But how little does that amount to on such an element? Can bravery keep a ship from sinking? With skill anything like equal, can any possible difference in point of bravery make up for the difference between two and one?

Consider a little: a ship is not a town, that you can bombard it with orators, and decrees for the encouragement of desertion, and declarations of the rights of men; a ship is not a town, out of which the lukewarm can slip away, or into which a few friends can give you admittance. You are brave: but neither are English seamen remarkably deficient in point of bravery. If you have your lights, they have their prejudices: they may find it not so easy as you may think to comprehend the doctrine of forced liberty: they may prefer a made constitution which gives tranquillity, to an unmade one under which security is yet to come: they may question the right of the thousands who address you, to answer for the millions who are bid to abhor you: they may prefer the *George* whom they know, to a *Frost* whom they never heard of.

Hear a paradox—it is a true one. Give up your colonies, they are yours: keep them, they are ours. This is what I most tremble at: excuse me—I am an Englishman—it touches me the most nearly.

"Oh, but the people of Bourdeaux."—Well—what of the people of Bourdeaux? Are the passions of one town to set at nought the interest of the whole nation? Are justice, prosperity, possibility, to be fought with for their sake? Think more honourably of their patriotism. Address them, enlighten them, persuade them: and if you find a difficulty in bridling that speck on your own continent, think whether you will find it easier to master so many vast and distant islands, with Britain on their side.

To yield to justice is what must happen to the mightiest and proudest nations. Disgrace or honour follows, according to the mode. Britain yielded to America: Britain yielded to Ireland. On which occasion was her dignity best preserved?

Sitting where you do, call it not *courage* to drive on in the track of war and violence.

There is nothing in such courage that is not compatible with the basest cowardice. The passions you gratify are your own passions: but the blood you shed is the blood of your fellow-citizens.

Who can say what it costs you at present to guard colonies? Who can say what you might save by parting with them?—I should be afraid to say it—almost the whole of your marine? What do you keep a marine for but to guard colonies? Whom have you to fear but the English? and why, but for your colonies? To defend your trade, say you? Do us justice, we are not pirates. We should not meddle with your merchantmen, if you had not a single frigate: we should not invade your coasts, if you had not a single fort. We have ambition and injustice enough, but it does not show itself in that shape. Do we hurt the trade of Denmark, Sweden, Naples, any of the inferior powers? Never: except they carry your trade for you, when you are at war with us for colonies.—What do I say? If we ourselves have a marine, it is not for trade, it is for colonies: it is because some of us long to take your colonies, all of us fear your taking ours.

Is consistency worth preserving? Is your boasted conquest-abjuring decree—that decree which might indeed be boasted of if it were kept—is that most beneficial of all laws to be anything better than waste paper? The letter, I fear, has been long broken: the spirit of it may be yet restored, and restored with added lustre. Set free your colonies, then everything is as it should be. "We incorporated Savoy and Avignon," you may say, "because it was their wish to join us: we part with our distant brethren, because like us they choose to be governed by themselves. Mutual convenience sanctioned our compliance with the wishes of our foreign neighbours: mutual inconvenience, the result of unnatural conjunction—mutual inconvenience, as soon as it was understood, made us follow, and even anticipate the wishes of our distant fellow-citizens. Reduction of the expenses of defence was the inducement to our union with those whom we either bordered on or inclosed: the same advantage, but in a much superior degree, rewards us for the respect we show to the wishes and interests of the inhabitants of another hemisphere. To neutral powers we give much cause for satisfaction, none for jealousy. Our acquisitions are two small provinces: our sacrifices are, besides continental settlements in every quarter of the globe, a multitude of islands, the

least of them capable of holding both our acquisitions." Were such your language, everything would be explained, everything set to rights. While you take what suits you, keeping what does not suit you, you aspire openly to universal domination: with fraternity in your lips, you declare war against mankind. Shake off your splendid incumbrances, the sins of your youth are atoned for, and your character for truth, probity, moderation, and philanthropy built on everlasting ground.

In the event of a rupture with Spain, you have designs, I think, in favour of her colonies. With what view? To keep them? Say so boldly, and acknowledge yourselves worthy successors of Louis XIV. To give them independence? Why not give it then where it is already in your power to give it? Will you put your constituents to an immense expense for the chance of giving liberty, and refuse it when you can give it for a certainty and for nothing. Compare the pictures—liberty without bloodshed on the one hand; bloodshed, with only a chance for liberty, on the other. Which is the best present? Which of the two is most congenial to your taste? Is it the bloody one? Go then to those colonists—go with liberty on your lips, and with fetters in your hands—go and hear them make this answer: "Frenchmen, we believe you intend liberty for us strangers, when we have seen you give it to your own brethren!"

You who hold us so cheap, who look down with such contemptuous pity on our corruption, on our prejudices, on our imperfect liberty—how long will you take our example to govern you, and of all parts of it those which are least defensible? Is it a secret to you any more than to ourselves, that they cost us much, that they yield us nothing—that our government makes us pay them for suffering it to govern them—and that all the use or purpose of this compact is to make places, and wars that breed more places?

You who look down with so much disdain on our corruption, on our prejudices, on our imperfect liberty, how long will you submit to copy a system, in which corruption and prejudice are in league to destroy liberty?—a compact between government and its colonies, of which the mother country is the sacrifice and the dupe?

You have seen hitherto only what is essential—collateral advantages crowd in in numbers. Saving of the time of public men, simplification of government, preservation of internal harmony, propagation of liberty and good government over the earth.

You are chosen by the people: you mean to be so; you are chosen by the most numerous part, who must be the least learned, of the people. This quality, with all its advantages and disadvantages, you the children of the people, must expect more or less to partake of. Inform yourselves as you can, labour as you will, reduce your business as much as you will, you need not fear the finding it too light for you. What a mountain of arguments and calculations must you have to struggle under, if you persevere in the system of colony-holding, with its monopolies and counter-monopolies! What a cover for tyranny and peculation! Give your commissaries insufficient power, they are laughed at: give them sufficient, your servants become dangerous to their masters. All this plague you get rid of, by the simple expedient of letting go those whom you have no right to meddle with. Cleared of all this rubbish of mischievous and false science, your laws will be free to put on their best ornament: then, and not till then, you may see them simple as they ought to be—simple as those who sent you, simple as yourselves. Yes, citizens, your time, all the time you either have or can make, is the property of those who know you and whom you know: you have none to bestow upon those distant strangers.

Great differences of opinion, and those attended with no little warmth, between the tolerators and proscribers of negro slavery:—emancipation throws all these heartburnings and difficulties out of doors; it is a middle term in which all parties may agree. Keep the sugar islands, it is impossible for you to do right:—let go the negroes, you have no sugar, and the reason for keeping these colonies is at an end; keep the negroes, you trample upon the declaration of rights, and act in the teeth of principle. Scruples must have a term: how sugar is raised is what you need not trouble yourselves about, so long as you do not direct the raising it. Reform the world by example, you act generously and wisely: reform the world by force, you might as well reform the moon, and the design is fit only for lunatics.

The good you do will not be confined to yourselves. It will extend to us: I do not mean to our ministry, who affront you, but to the nation, which you most wish to find your friend. No, there is no end to the good you may do to the world: there is no end to the power that you may exercise over it. By emancipating your own colonies, you may emancipate ours: by setting the example, you may open our eyes and force us to follow it. By reducing your own marine you may reduce our marine: by reducing our marine, you may reduce our taxes: by reducing our taxes, you may reduce our places: by reducing our places, you may reduce our corruptive influence.

By emancipating our colonies, you may thus purify our parliament: you may purify our constitution—you must not destroy it. Excuse us, we are a slow people, and a little obstinate: we are used to it, and it answers

our purpose. You shall not destroy it: but if purifying it in that slow way will satisfy you, we can't help your purifying it.

A word is enough for your *East India* possessions. Affections apart, which are as yet unknown, whatever applies to the West Indies, applies to the East with double force. The islands present no difficulty: the population there is French: they are ripe for self-government. There remains the continent: you know how things are changed there:— the power of Tippoo is no more. Would the tree of liberty grow there, if planted? Would the declaration of rights translate into *Shanscrit?* Would *Bramin*, *Chetree*, *Bice*, *Sooder*, and *Hallachore* meet on equal ground? If not, you may find some difficulty in giving them to themselves. You may find yourselves reduced by mere necessity to what we should call here a practical plan. If it is determined they must have masters, you will then look out for the least bad ones that could take them: and after all that we have heard, I question whether you would find any less bad than our English company. If these merchants would give you anything for the bargain, it would be so much clear gain to you: and not impossible but they might. You know better than to think of obtaining for the quiet possession of these provinces anything like what would be spent at the first word for the chance of taking them by force: the pleasure of rapine, bloodshed, and devastation is not to be set at so low a price: but something surely they would give you. Though to you the country is a burthen, it does not follow that to them it might not be a benefit. Though even the whole of their vast possessions were a burthen to them, the burthen, instead of being increased, might be diminished by the addition: the expense of defence might be reduced: Pondicherry might be to them what Savoy is to you.

But enough of suppositions and conjectures. *How* you part with the poor people who are now your slaves, is after all a subordinate consideration: the essential thing is to get rid of them: You ought to do so if nobody would take them without being paid for it. Whatever be their rights, they have no such right as that of forcing you to govern them to your own prejudice

"Oh, but you are a hireling: You are a tool of your king, and of his East India company: they have employed you to tell us a fine story, and persuade us to strip ourselves of our colonies, not being able to rob us of them themselves."— O yes, I am all that: I have not bread to eat, and no sooner is your decree come out, than I get £50,000 from the company, and a peerage from the king.— *I am a hireling:* — but will *you* then betray the interest of your constituents, because a man has been hired to show it you? *It would be of use to England:* — but are there no such things as common interests, and are you never to serve yourselves but upon condition of not serving others at the sametime? Is your love for your brethren so much weaker than your hatred of your neighbours? *It would be of use to England:* — but are *England* and *king of England* terms so perfectly synonymous, and do you of all men think so? *The king's interest would be served by it:* — but by knowing a man's interest, his true and lasting interest, are you always certain of his wishes? Is consummate wisdom among the attributes of his ministers? Have they no passions to blind, have they no prejudices to mislead them? Are you so unable to comprehend your own interest, that it is only fróm the opinion of others that you can learn it, and those your enemies? *The king of England is your enemy:* — but because he is so, will you put yourselves under his command? Shall it be in the power of an enemy to make you do as he pleases, only by employing somebody to propose the contrary? See what a man exposes himself to by listening to such impertinences! *I am hired:* but are not advocates hired, as often as a question comes before a court of justice? and is justice on either side, because men are paid on both sides? Legislators, suffer me to give you a warning—this is not the only occasion on which it may have its use. Those, if any such there be, who call attention off from the arguments that are offered to the motives of him who offers them, show how humble their conception is, either of the goodness of their cause, of the strength of their own powers, or of the solidity of your judgment, not to say of all three. If they practise upon you by suggestions so wide from reason, it is because they either fear or hope to find you incapable of being governed by it.

A word of recapitulation, and I have done. You will, I say, give up your colonies— because you have no right to govern them, because they had rather not be governed by you, because it is against their interest to be governed by you, because you get nothing by governing them, because you cannot keep them, because the expense of trying to keep them would be ruinous, because your constitution would suffer by your keeping them, because your principles forbid your keeping them, and because you would do good to all the world by parting with them. In all this is there a syllable not true? But though three-fourths of it were false, the conclusion would be still the same. Rise, then, superior to prejudice and passion: the object is worth the labour. Suffer not even your virtues to prejudice you against each other: keep honour within its bounds; nor spurn the decrees of justice because confirmed by prudence.

To conclude. If hatred is your ruling

passion, and the gratification of it your first object, you will still grasp your colonies. If the happiness of mankind is your object, and the declaration of rights your guide, you will set them free. — The sooner the better: it costs you but a word: and by that word you cover yourselves with the purest glory.

POSTSCRIPT, 24th JUNE 1829.

An argument, that had not as yet presented itself to the view of the author when penning the accompanying tract, is furnished by the consideration of the quantity of the matter of *good*, operating to the effect of *corruption*, in the shape of *patronage*.

As a citizen of Great Britain and Ireland, he is thereby confirmed in the same opinions, and accordingly in the same wishes. But, as a citizen of the British Empire, including the sixty millions already under its government in British India, and the forty millions likely to be under its government in the vicinity of British India, not to speak of the one hundred and fifty millions, as some say, or three hundred millions, as the Russians say, of the contiguous Empire of China, — his opinions and consequent wishes are the *reverse*. So likewise, regard being had to the colonization of Australia; especially if the account given of the intended settlement on the Swan River in the Quarterly Review for April 1829, and from it in the Morning Chronicle of 26th April 1829, be correct — In regard to Australia, it is in his eyes preponderantly probable that, long before this century is at an end, the settlements in that vast and distant country will, all of them, have emancipated themselves, changing the government from a dependency on the English monarchy, into a representative democracy.

Dilemma, applying to a distant dependency, this. Admit *no* appeal (judicial appeal,) you thereby, unless your government is purely military, establish *independence:* admit appeal, you thereby subject the *vast many* of those who can *not* afford the expense of the appeal, to slavery under the relatively few who *can*.

In most of the copies which, from time to time, were distributed in the way of gift, inserted in MS. at the bottom of the first page, in the form of a note to the title, was the memorandum following: —

"Anno 1793, written just before the departure of M. Talleyrand, on the occasion of the rupture between France and England. Copy given to Talleyrand's secretary, Gallois, who talked of translating it."

JEREMY BENTHAM

TO HIS

FELLOW-CITIZENS OF FRANCE,

ON

HOUSES OF PEERS

AND

SENATES.

Jeremy Bentham to General Lafayëtte.

My ever dear Lafayette! — Your commands are laws: subject-matter this question — "In France, shall we, or shall we not, have a Chamber of Peers?" On this question you desire my thoughts: here they are at your service. For these thoughts, *you* are not responsible: nor for any part of them. What yours are, I have never known: nor, antecedently to your receipt of this paper, would I know them if I could help it. My wish has all along been — that mine on this subject should be free from all bias; and that they should stand or fall by their own strength. Proud and gratified of course shall I be, in proportion as my notions of what is best are found to coincide with yours.

With yours? — Yes: and, I will add, with those of our beloved King.

As to any points, on which, in either instance, I fail to experience this good fortune, set any of the honest and talented men whose qualifications have come within your observation — set them to apply correction to any such errors as it may have happened to me to fall into. In this way, at any rate, I may have the satisfaction of being of use to our dear country: and it matters not in what proportion it may be in the one way, and in what proportion in the other. Whosoever, if any one, writes accordingly, — desire him to write altogether at his ease, speaking of my thoughts, in the terms, whatsoever they are, in which his own as to mine happen to present themselves.

Queen's Square Place, Westminster, London,
15*th October* 1830.

JEREMY BENTHAM

TO HIS

FELLOW-CITIZENS OF FRANCE,

ON

HOUSES OF PEERS AND SENATES.

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§ I. *Introduction.*

FELLOW-CITIZENS,

1. "Your predecessors made me a French citizen: hear me speak like one." So said I for the first time anno 1792. Hear me now speak thus for this second time.

2. Two great questions are now on the carpet —

I. A House of Peers is in existence; — shall it be discarded? I say — Yes.

II. A Senate is proposed to be instituted; — shall it be instituted? I say — No.

3. If deception be not a man's object, he cannot make known too early the end he is endeavouring to lead his readers to. With me this is a general rule: on the present occasion, such (you see) is my practice.

4. On matters of government more particularly, no proposition do I, on any occasion, make without *reasons* — at least, what to me appear such — for its support. On every occasion, these reasons have the greatest-happiness principle for their ground and source.

For any accession that I ever look for to any such proposition, on those reasons is, on every occasion, my sole reliance. As to any influence with which any opinion, declared by me to be mine, might be supposed to act on other minds, — merely because it is declared by me to be mine, or merely because it is thought to be mine, — it is in my own account set down as exactly equal to 0: lower than this it cannot be set by anybody.

5. I have by me a receipt for exhausting any subject a man takes in hand.* A good receipt is one thing: following it well is another. I have done my best towards both things. You will judge.

6. In the concisest manner possible — in the fewest words possible — I hereby submit to your view the *reasons* by which, in relation to these subjects, these my opinions have been determined.

7. No rhetoric here; no appeal to passion; no recourse to imagination; no exercise given to the art of deception in any of its branches.

8. "Strike, but hear," said the Athenian general to his Spartan ally, on the occasion of a difference of opinion. "Be angry and sin not," says a Christian apostle. Be as angry as you please; and in so doing, sin as much as you please, say I to all such of you, my dear and admired fellow-citizens, whom I have not the good fortune to be about to see agreeing with me. Give vent to your anger; I defy you to produce any in me. Give vent to your anger; but give the public and me the benefit of your *reasons.*

9. On this same side, others there will probably be, who will present themselves to you with arrows taken from that armoury — with ornaments taken from that wardrobe. To these papers, should such be their pleasure, they may refer you, for better security and further reliance.

§ II. *Topics on the carpet as to a Second Chamber.*

1. A Chamber of Peers, a Senate, or neither the one nor the other, but a Chamber of Deputies without either: so far as my information and observation are correct, this is the description commonly given of three states of things, between which and which alone the option is on this occasion considered as being to be made.

2. But in my view of the matter, this description wants more or less of being sufficiently particular. Subject-matters, which, on this occasion, require to be taken into consideration, or will of themselves come into consideration, are these which follow:—

I. *Powers* requisite to be given to the body in question.

II. *Persons* by whom the members of the body in question shall, in the several cases, be located.

III. Conditions of eligibility, requisite on the part of the persons located: conditions of eligibility, as you say in French; *qualifications,* as we say in English: the French, clearer and more expressive; the English, more concise.

3. Neither the one nor the other, say I, as above: quite sufficient the chamber of deputies, located by the people; that is to say, by a part more or less considerable of the whole number of the members of the great community in question: but, as to what part, that belongs not to the present question. Quite sufficient the one *ruling,* or with a king *co-ruling,* body: needless, useless, worse than

* In a work styled *Chrestomathia.*

useless — that is to say, purely maleficent,— such, if I mistake not, will be seen to be every body that can be attached to a chamber of deputies, in such sort as to be capable of applying a *veto*, or so much as a cause of retardation — a *bar*, or a *drag* — to any of its proceedings: such, whatsoever be the *powers* attributed to it, whatsoever the *persons* by whom the situation composed of those powers is conferred.

4. — I. The *powers* proposable it seems necessary that I should present to your view. — II. The description of the *locators* proposable it seems likewise necessary that I should present to your view. — III. As to *qualifications*, on the present occasion to say anything on this topic would not be consistent with the opinion just expressed, with the accompanying reasons for its support.

5. Powers that present themselves to me as proposable, are the following: —

I. A share in the *legislative* authority in the supreme grade. For, this has place everywhere: in every instance in which legislative power in the supreme grade is exercised by a representative body—whether acting alone, or in conjunction with a monarch,—it constitutes the basis of every power given to any other body added to it.

II. A portion of *judicial* authority. For in France, to the portion of supreme legislative authority in question this appendage stands attached at present. And, this is attached to the portion of legislative authority in England, in the case of the *second chamber* called the *House of Lords:* and, in the Anglo-American Union, in the case of most of its compound States separately taken, as well as in that of the aggregate body composed of deputies sent from all of them, styled the *Congress: Senate* is the denomination given to it in this latter case.*

III. A portion of *administrative* authority in the supreme grade. For, this is attached to the portion of legislative authority in the Anglo-American States, in the case of that same *senate*.

6. Sole *locators* that seem proposable, and between whom the option will have to be made, these two: —

I. The monarch, of course: — he being the sort of functionary by whom this power is possessed and exercised at present — in France, in England, in a word, in every monarchy, in and under which there is a *second chamber*, with its population, in addition to that which is composed of the *deputies of the people*.

II. A body, on the members of which this power is conferred. Example — original and most illustrious — in the case of the senate in the above-mentioned congress, the aggregate composed of the "*legislatures*" of the several states.

7. So much depending on the situation of the *locating* functionary or functionaries, this topic could not, on the present occasion, be passed by.

§ III. *Objections to any, even the best appointed, Second Chamber.*

1. Now for the *reasons*, by which my rejection of a second chamber has been determined.

I. The case to which I apply them, in the first instance, is — that which is most favourable to a second chamber: — that is to say, the supposition — that the choice made — as well in respect of the *powers* conferred, as of the sort of person or persons by whom they are conferred—is that which stands least exposed to objection.

II. And, for argument sake, let the power conferred be — a share in the legislative authority alone, unaccompanied with a share in either of the two other authorities.

III. And, let the locators be — either those who are so in the case of the senate of the Anglo-American congress as above; or those who are so in the case of the first chamber of that same congress—the chamber, the members of which are styled the representatives of the people.

2. If I do not deceive myself, it will be seen—that, whatsoever be the strength of the objection in the case which I begin with, as being the most favourable case, it is not less in any other proposable case; and that, moreover, as between simplicity and complexity of powers, whatsoever be the strength of the objection, in the most *simple* case, it will be seen to become greater and greater, as the case becomes more and more complicated.

3. — I. *Objection the first.* — On the advocates of this appendage lies what is called the *onus probandi* — the burthen of proof. On them, if there be any net *benefit* produced by it, — on them lies the obligation of bringing it to view. Of no such benefit has exhibition been ever made: of benefit in some shape or other, *assumed* has the existence been by everybody; *proved* by nobody.

4. Antecedently to all developement in detail, one plain reason against it presents itself to a first glance. Of a chamber of deputies,

* In speaking of the chamber of peers, as likewise of its proposed substitute—a senate,—I use the appellation of the *second chamber*, because such appears to me to be the practice. But, whatsoever it may be in respect of any other order, it has not been so, in every instance, in respect of the *time* of its institution. In the case of the Anglo-American Congress, mention is made of the House of Representatives before any mention is made of the Senate.

The relative *time* of the institution being, with reference to the present question, matter rather of curiosity than importance, if, in the course of this address, anything is said in support of the above observation, the place it occupies will be that of an appendix.

in the character of a *first* chamber—that is to say, first in the order of importance—of a legislative body—principally, where not exclusively acting as such—the utility, nay, the indispensable necessity, is recognised on all sides: the existence of this necessity therefore *may* be—it *must* be—taken for a *postulate.* But, that from the force and efficiency of this body, the existence of any other body—before which must be carried, ere the force of law be given to it, every proposed law—should not make deduction more or less considerable, is not possible: the *time* during which the measure continues in the *second* chamber before it is otherwise disposed of, is so much delay; and, even supposing *adoption* and *consummation* to be the ultimate result, in so much that an *ultimate negative* is not applied to it,—still delay, so long as it lasts, is a temporary *negative:* and, if the measure has any net benefit for its result, the value of the loss by the delay is in the exact proportion of the length of it.

As to any counter-presumptions, these will be considered presently.

5.—II. *Objection the second.*—*Needlessness.* Yes: needless—utterly needless—may be seen to be this institution. No benefit in any *determinate* shape having ever been held up to view as resulting from it,—if then, to satisfy the reader of the needlessness of it,—and thence, as below, of the perniciousness of it,—anything further can be done,—it must be by looking out for such *supposable* benefit as the nature of the case may be capable of suggesting.

6. Supposable need the first. Need of the degree of consideration, which, without this additional body, a measure cannot receive. Supposable reason in support of the institution: as the length of the *time* during which the measure continues in the second chamber, is the quantity of additional *consideration* which it is capable of receiving. *Answer*—No need of a second chamber follows. For, to the first belongs the power of giving to the measure whatsoever length of consideration is, in the opinion of that same first chamber, best adapted to it: and the correspondent quantity of deliberation and time being bestowed upon it, any further quantity must, according to that same opinion, be useless, and thence, as will be seen, pernicious.

7. Supposable need the second. On the part of the members of the legislature, need of a degree of appropriate aptitude not otherwise likely to have place. But, will it be said that to the *second* chamber belongs more appropriate aptitude—namely, in all its branches taken together—than to the *first?* Consistently with the above *postulate*, this cannot be said: if to this same second chamber more such appropriate aptitude belongs than to the first, not *second* ought it to be, but *first*, or rather—what upon the face of the argument appears already to be the only reasonable state of things—the *only* chamber.

8.—III. *Objection the third.*—Unavoidable perniciousness: namely, in respect of delay: and, in the first place, what may be styled the *involuntary* delay. The first chamber giving to the measure whatsoever delay is attended with net benefit, or say *profit*, whatsoever delay is given to it by the *second* chamber is so much net detriment—so much *net loss* in the account of *profit and loss.* And, as has been seen above, a quantity more or less considerable of this detriment it is not in the power of the second chamber to forbear producing: to the minimum of this quantity, *addition* it is capable of making to an amount altogether *unlimited;* from it, it is not capable of making *subtraction* to any so much as the *smallest* amount.

A quantity of time, more or less considerable, is thus consumed and wasted in the second chamber, on the occasion of each measure:—at any rate, the time employed in one *proceeding,*—and, if there be proceedings more than one, then, in addition to the sum of those same proceedings, the sum of the several intervals between one proceeding and another.

9.—IV. *Objection the fourth.*—Perniciousness in respect of *voluntary* delay:—in respect of whatsoever delay is capable of being *voluntarily*, or say *purposely* produced, in addition to that which, as above, has place *involuntarily*, as in the case of the motions of the heart and arteries—motions produced without any exercise given to the faculty of the *will.* To the amount of this delay, thence to the amount of evil producible by it, *limit* assignable there is none.

10.—V. *Objection the fifth.*—Frustration, or say utter exclusion, put upon the benefit of the several in themselves practicable beneficial measures, separately considered. Instances in which this evil will have place are all those in which, but for the delay, involuntary and voluntary together, that has place, a measure to an amount more or less beneficial would have been adopted and carried into effect; but which, being known to be incapable of producing such its effect, if not adopted till after the expiration of the time in question,—is, by that consideration, prevented from being brought forward.

11. Note here—that the appellatives *good* and *evil* being, as above, mutually intertranslateable, not only may *positive good* be, by this means, *prevented* from coming into existence, but *positive evil*, to any amount, *made* to come into existence.*

* For example, of the several *calamities* and *casualties* to which human nature stands exposed, see a list in *Constitutional Code*, Ch. XI. *Ministers severally*, § 5, *Preventive Service Minister.*

12. — VI. *Objection the sixth.*—Perniciousness by *all-comprehensive* delay — by delay and prevention of all beneficial measures in the lump, by means of the aggregate amount of the delays, involuntary and voluntary, thus produced by the existence of a second chamber, as above.

13. The *present* is a *time* at which — the present is an *occasion* on which — this evil presents, with particular force, a claim to notice. The work which at present, my fellow-citizens, you have in hand is a work of regeneration. What you have to make is, in a word, *an all-comprehensive code.* With such a work as yet to create, think how much greater the evil of *delay* cannot but be, when compared with what it would be if that same code were already in existence. Not that everything in the existing code will require to be changed: only that, with a view to any eventual demand for change, everything requires to be looked at.

14. In the first chamber — in the chamber of deputies—the protraction to which the immense future contingent mass will unavoidably be subjected, will receive no small accession from the recent arrangement, by which the mouth of every member of this same chamber has been opened, to the purpose of his giving origination to proposed laws. The miracle which *the Lord* wrought upon the stud of Balaam (I mean them no disrespect) your new king has wrought upon your deputies.

15. The *tribune* — that ridicule-provoking machine, by which a palsy has been struck upon the tongues of the most eloquent people upon earth — will ere long be consigned to the *lumber-room:* and, from the removal of this cause of impediment to *speech*, the indefinite mass of inevitable decay in *action* will receive ulterior increase.

16. As *time* progresses, so will the quantity of appropriate *instruction* — the quantity of thought, right and wrong together, bestowed upon the field of law, and of expression, in that place as in other places, given to that thought — the number of speaking members, and the fluency of each — in a word, the quantity of *time* occupied by each.

17. Turn to the Anglo-American States. Ask, of such of their politically-instructed and intelligent citizens as shall come within your reach — ask, if from this cause the length of discussion is not receiving continual increase?

18. No secret to the enemies of your felicity — no secret will be the effect of the all-comprehensive delay necessitated by a second chamber. On this account, as well as on so many others which remain to be here presented to your view, the incumbrance will have them for partisans and advocates — advocates strenuous in proportion to the retardative weight of it.

19. Under our "*matchless constitution*" (so the phantom has christened itself,) this power of defeating all salutary measures in the lump, — and *this* by means raised above the sphere of observation — is an engine of matchless efficiency — an engine, of the capability of which no part is ever lost — an engine which at all times is made the most of.

20. Accordingly, as, to the ruling few, abuse in every shape is *profit* — having been created and preserved by them for that purpose, — that which, in regard to removal of every part of that same abuse — in other words, in regard to *reform* in every shape, — they insist upon is — that it shall be *gradual.* A man of this stamp is as fond of reform as you or any body, only it must be *gradual.* A proviso so reasonable — how can you refuse to join with him in it? Ought it not — this and every reform — ought it not to be *temperate?* Well then — to be *temperate*, it must be *gradual*, — to be *well* done, it must be *gradually* done. Fellow-citizens! as often as you meet with a man holding to you this language, say to him — "Sir, we have our *dictionary:* what you are saying we perfectly understand: *done gradually* means *left undone* — left undone for ever, if possible; if not, every part of it for as long a time as possible."

21. Such is the desire, such the endeavour, such the language, such the policy, such the morality — of the aristocratical party, self-styled and distinguished among us by the appellation of *the Whigs.* The Tories cling to abuse, and abhor reform, and declare as much: the Whigs cling to abuse, and abhor reform, and profess to love it. You have now seen the cloven foot by which an *anti-reformist*, in the mask of a *reformist*, is self-betrayed.

22. The Tories, whom they behold intrenched in Harpy Castle (Blackstone's venerable old castle,) they besiege, for the hope of substituting in it themselves to their at present more fortunate rivals. While carrying on such their operations — perplexing is their position, ridiculous enough their distress. No otherwise can they ever act, but with ammunition borrowed — say rather sto-

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Of any one of these sorts of calamities, take for an example this or that individual instance: if it has happened for *want* of a law, by which it would have been *prevented*, and which would have passed within the time but for the delay produced by the second chamber — but which, by the delay that had place in the second chamber, was prevented from being passed within that time: here is a *calamity* of which the existence of the second chamber is the cause.

So, on the other hand, in the case of the want of a timely *repeal* of a law by which the calamity in question was produced or aggravated.[a]

[a] This may be seen to be among the evils resulting from a too extended *continuous* territory; and, in a still greater degree, from *distant dependencies.*

len — from the *radicals*, the friends of the people: nor without doing more or less damage to the object of their concupiscence — this same stronghold and treasury, which the friends of the people are all the while attacking for the purpose of blowing it up.

23. Fellow-citizens, we have our Whigs — you, of course, yours.

24. As to the *amount* of the evil in this case, to form any tolerable conception of it may, to a first glance, appear absolutely impracticable. Further consideration may present a prospect somewhat less disheartening. Let any person make out for himself, in his own mind, a list of all the *evils* which, in his view, the community is suffering, for want of such *remedies* as it may be in the power of legislation to supply. These evils he may, on no unreasonable ground, consider as the fruits of any system — of any set of arrangements — by which delay to any amount is established, independently of any demand produced for it by the individual case in question: and for these evils he may consider the public as beholden to whatsoever persons have contributed either to the *institution* of the system in question, or to the *support* of it; especially after the evils resulting from it have, as here, been spread open before the public eye.

25. That, but for this system of delay, they would, *all* of them, within his lifetime, be removed, — this is more than he can naturally regard himself as assured of: but — that by this system, if proceeded in, the removal of them will, as to the greater part of them, be rendered impossible, so long as it is persevered in, — this is what he may stand perfectly assured of.

26. By what causes have such establishment and support been produced in the minds of these same persons? by *obtuseness?* or by ill-directed *acuteness? Answer* — naturally enough, by a mixture of both.

27. Of *obtuseness*, an exemplification seems to be afforded by the so-long-established Swedish legislation. Bodies, acting — in appearance, in conjunction with, — in effect, in subjection to, the monarch: four — nobles, clergy, burghers, peasants. These classes being regarded — each by itself, and each by the rest and by the king — as having an interest to itself, different from that of every other, — separation followed of course: — by each of these, the exemption from the observation of all persons, liable to possess, on any occasion, an opposite and rival interest, would naturally enough be regarded as an advantageous as well as agreeable circumstance: and the monarch would see his advantage in playing them off one against the other.

28. Mark now the benefit which the authors reap — (and is it possible they should not *look to reap?*) — from this policy. No less than, so far as regards themselves, and the public evils from which they reap the private benefit, — the perpetuation of that same benefit and of those same evils, for the sake of it.

29. Inconvenience there would be, and to an indefinite amount, in so unpleasant an operation, as that of standing up and arguing, in defence of all these several arrangements — each of them, with its evils seen in its transparent womb, — so numerous, all the time, the cases, in which, the light of day having been cast upon them, silence, nonsense, or glaring absurdity, would be the only option at the choice of a would-be supporter of them.

30. Thus it is, that *that* which eloquence would in vain strive to do in retail, delay, in the hands of cunning, does, and with complete effect, by wholesale, for and during a time, which (as English lawyers say of *memory*) for aught "runneth not to the contrary," is abuse in all its forms, and thence in all its unduly profitable forms, continued and profited by: — remedy, in all its forms, excluded.

31. Thus, under *matchless constitution*, in the minds of rulers whatsoever acuteness has place, it is to work of this sort that it applies itself. Yes: not merely to indolence and incapacity, but to craft likewise, may be seen to be with truth imputable the so-conspicuous nothingness of parliament. So to order matters, that, for the bringing forward propositions in relation to any subject, by members of either house, acting otherwise than by and under the direction of those of the king's cabinet, the quantity of time shall be minimized, — such is the problem, on the solution of which, what little intellectual and active aptitude can have residence in such a place, is at all times occupied. As for abuses, in all their shapes, — for giving *increase* to them, time is always at the command of ministers: for *diminution* of them — for remedy to them — time for so much as the attempt is never at the command of any one else.*

* Of this same policy, another branch consists in bringing forward plans of sham reform and commissions of inquiry; the plans brought into parliament by members; the inquiries carried on by individuals employed to collect facts. This last course has the additional advantage of putting into the pocket of a minister, by means of the pay given to his inquirers, money, or money's worth, in the shape of *patronage*.

Of sham law-reform, a masterpiece has lately been held up to the light, in No. XXVI, for October 1830, of the Westminster Review: — *reduction* in delay, vexation, and expense, in litiscontestation, the professed object; boundless *increase* the demonstrated sure effect. How to continue for and during the life of the longest liver of the individual rulers now in existence — how to continue justice in a state of inaccessibility to all but the rich and powerful few, — such was, in this case, the problem to be solved.

Of this same policy another branch is presented,

32. One way of making amends for this disaster might be to set up and open an *Historical School, à la mode de l'Allemagne:* and instead of sending the *Schoolmaster abroad*, send for a schoolmaster *from* abroad. Monsieur l'Herminier in France, — or Der Heer Savigny, in Germany, — could furnish admirable masters. It is not every man that knows, that by this same school a *history of law* is spoken of, — and with no small assurance, — as a most advantageous substitute to *law* itself: for any country whatsoever, the history of the law of that same country, with or without the history of the law of this or that other country or countries, new or old; and that, by these philosophers, it is mentioned with perfect sincerity, and no small earnestness, that by an historical work of this sort, direction sufficient may be given to the political conduct of men in that same country.

33. Upon the same principle, to what incalculable amount might not improvement be made in other departments? To the army and the navy of a country, substitute, for example, a history of the wars waged by that same country, from the earliest, or other more appropriate, period in the general history of that same or some other country, down to the present time, or some earlier time?

34. So in private and domestic life. To an order on the cook for dinner, substitute a fair copy of the housekeeper's book, as kept for and during the appropriate series of years, whatsoever it may be.

35. — VII. *Objection the seventh.* — Perniciousness, resulting from prevalence given to minorities over majorities. In comparison of this, the evils above mentioned, immense as is the mass of them, are still but evils of detail. Behold in this a still more strictly all-comprehensive evil: not actual suffering indeed, but an unquestionable cause of it in every one of its shapes. Read and consider whether this is not true.

36. For the performance of the operations in question, a set of men have been selected. And *who* are they? — that is to say, for the purpose in question, *what* are they? By the very supposition, they are the most apt of all that could have been selected: all of them, for any difference that can be assumed and applied to the case in question, equally apt. Well, then: — In relation to whatsoever may happen to be the question — in this, as in any other set of men, disagreement is liable to have place. Wanted, then, a *test* of rectitude; and, at the same time, a *measure* of the *degree* of probability as to its having place. One test, and at the same time measure, does the nature of things admit of: — this, and no other: — namely, the ratio of the number on one side to the number on the other side: *that* division, the component individuals of which are in the greatest number, being composed of those who are on the right side; the other division, of those who are on the wrong side.

37. Here, then, we have an undisputed and indisputable test and measure of rectitude. Apply it now to the purpose of ascertaining the consequences of having a second chamber. What are they? *Answer* — On *every* question, which comes in the first place before the first chamber, and then before the second chamber, — to the right decision of the first chamber may be substituted a wrong one. I do not say, that, to that same all-comprehensive extent, this is *probable;* but what I do say is — that this is *possible.*

38. *Measure* (I say) as well as *test.* And now as to the production of evil by the addition of this lumber, see an exemplification of the degree of probability capable of being shown by the application of this measure. In the first chamber, number of members, suppose 500: in the second chamber, 5. In the first chamber, — *for* the measure in question, all 500; against it, 0: in the second chamber, — for it, 2; against it, 3. Put now the numbers in both chambers together, you have — *for it*, 502; against it, 3. What is the consequence? The three prevail over the 502: the beneficial measure, whatsoever its importance, whatsoever the evil flowing from the rejection of it — is rejected.

39. Note — that, under *matchless constitution*, this same number 3 is actually sufficient to give existence to the noxious effect, even though in the first chamber the whole number — 658 — were unanimous in favour of it.

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to view by the word *consolidation*. How to continue the political rule of action, in a state — partly of uncognoscibility, and partly of non-existence, — such was, in *this* case, the problem to be solved: and, in the word *consolidation* may be seen the solution given to it. Ominous to your ears, my fellow-countrymen, will be the sound of the word *consolidation*. Witness the *tiers consolidé:* with you it is the name of national bankruptcy: with us it is the name of a product of ministerial cunning.[a]

[a] Have you a receptacle, the odour of which is troublesome? Employ a set of men — *nightmen* is with us the official name of them, — employ them — not to empty it, but to look into it, and report, more particularly, how it smells. So doing, you will follow the precedent set by our law-reformers; by our ex-Chancellor Lord Eldon, and our present self-constituted justice minister, the half-namesake of our once so famous Sir Robert Walpole, and his rival in the art and science of political corruption.

In this wicked world, alas! nothing is certain but death! Liable to be frustrated are the best-concerted plans! In one of his commissions of inquiry, the hero of the Honourable Secretary's office seems destined to sustain a most unexpectable defeat. To say which, is needless: it will show itself; already it has in part shown itself.

In the second chamber — namely, the *House of Lords*, — the number necessary, but sufficient, to give exercise to the power of the whole is 4; majority, 3.

40. — VIII. *Objection the eighth.* — Perniciousness through rival contention. Continue or institute a second chamber, — mutual relations in respect of extent of power (*competence* it is called) must somehow or other be settled: competence of *jurisdiction* they call it, where the two authorities in question belong to the *judiciary* establishment. But, in the present state of jurisprudence, the chances against a clear adjustment — such as shall shut the door against doubts and disputes — are by no means inconsiderable. Whence, for so long as these same authorities are clashing, and waging against one another a war of words, all useful business being at a stand, — the war has *them* for the combatants, but you — the members of the whole community — for the sufferers.

41.—IX. *Objection the ninth.*—Perniciousness through complication. In legislation, whatever is needless is pernicious. Altogether upon its being *known* depends all the usefulness of the law — of the whole and of each part of it: the production of every good effect it is capable of producing; the exclusion of every evil it is capable of excluding. Abundant — unavoidably abundant — much more than could be wished — is the quantity of legislative matter that will be found unavoidably and indispensably requisite for the purpose: not inconsiderable (as above) the quantity of doubts and disputes, to which it will be liable, and likely, to give birth. By every syllable added, increase will be given to the abundance of this same matter, increase to the difficulty of keeping it in mind, and, on each occasion, in the instance of every person concerned, to the probability of its not being in his mind; also, in regard to whatever portion of it happens to be in his mind, to the probability that the import of it will be a subject-matter of doubts and disputes: thence, at the charge of the aggregate number of the members of the community, to the probability of the commission of acts of maleficence prohibited by the law under the name of *offences* — of correspondent *wrongs* inflicted and sustained — of instances, in which the *benefit* intended by the institution of the correspondent *rights* fails of being enjoyed.

Not the less real are these evils, from being to so lamentable an extent unheeded.

42.—X. *Objection the tenth.*—Inoperativeness as to good. Here again applies the *onus probandi.* If any one knows of any *positive* good in particular, that can be done *by* and *with* a second chamber, and cannot be done *without* it, or that is more *likely* to be done *by* and *with* a second chamber than *without* a second chamber — let him declare it.

43. In relation to positive *evil*, — the effects and tendency of any such additional machinery, when applied to the manufacturing of laws, have, by the foregoing observations, been brought to view: its needlessness to all beneficial purposes, its perniciousness, its fruitfulness in positive evil — in so many distinguishable ways: — so, in like manner, in relation to positive *good*, its utter inoperativeness will, by the application of these same observations, be rendered not less manifest.

44. In and by this phrase — security against precipitation — a sort of *apparent* positive good — a *nominal* one it may be called — is held up to view as produced by the institution of a second chamber: *Nominal?* Yes; that is to say, in contradistinction to *real.**

Inconsistent is the notion of any such security with the original supposition and assumption of the superior aptitude, in all its branches taken together, in the instance of the population of the first chamber, as compared with that of the second: in the first chamber, defalcation from the quantity of time requisite for consideration and discussion, men cannot, on any individual occasion, make in any other than the *voluntary* manner as above explained: whereas, without any exercise of the will, and to an amount more or less considerable even against the will, or, as the phrase is, in contrariety to the *wish* of a second chamber, is addition made, in each instance, to the quantity of delay, which, were there but one chamber, would be necessary.

45. In a chamber acting singly, — no such precipitation, any more than any other occurrence or state of things, bad or good, can have place — *against* the will of the greater number of its members. Small is always the number which, on any occasion, suffices for making delay to which no determinate limit is capable of being assigned: and this — not only on sufficient, but even on insufficient ground; and when the delay produced is useless, as well as when it is beneficial and needful.

46. True it is, that by means of *non-attendance* on the part of a certain number of the members, decision may be made to have place in contrariety to the will and wish of the greater part of the whole number of the mem-

* *Negative*, the good, if any there were, might be termed, with rather more propriety than *positive;* for, by *precipitation* is meant the non-existence of the quantity of time necessary to be employed in consideration and discussion, on pain of misdecision: and, in consequence of such non-delay, — production and admission given, to such *positive* evils, as would have stood excluded by an allowance of time sufficient for those purposes. This, however, is but a question of words: nor would mention have been made of it, but for the hope of substituting light to any obscurity which might have place in the conception entertained in relation to it.

bers. But, in this case, the fault lies in the non-existence — not of a *second chamber*, but of the arrangements necessary to secure constancy of attendance.*

§ IV. *Dutch Reasons in support of a Second Chamber examined.*

1. I had gone thus far, when a most instructive and satisfactory document came within my observation. It is a *report*,† presented to the king of the Netherlands by a commission charged with the revision of the instrument now in force in that kingdom, under the denomination of "*The fundamental law.*"

2. In this document, with the satisfaction thus expressed, I see taken in hand the question between one and two chambers. "*Representatives of the nation*" is the appellation by which it characterizes the aggregate body of those functionaries, of whom, with the addition of the king, the *sovereign authority* is composed.

3. For support to the system of two chambers, *reasons* the report furnishes, in number, at any rate, altogether respectable. Let us take a look at them. The first, then, to be looked for is — the *end in view*. For, this will serve as a key to all the reasons — in a word, to everything that comes after it. What, then, is this same end in view? *Answer* — It is "l'esprit de la monarchie; l'esprit de la monarchie le prescrit, l'intérêt de la nation l'exige."‡ The power of locating the members of the second chamber is the subject-matter of which this is said: and, if conformity to this same *esprit* is the proper end in view in that one case, it must be because so it is in every case.

4. Now, then, what is this same *esprit?* Let us take a sniff at it. A sort of *bubble* it may be seen to be:—and inodorous—empty of scent and sense it would also be, were it not for the *interêt de la nation*, which comes immediately after it, and that which, by this means, is rendered manifest is—that the state of things, the establishment of which was, on this occasion, the object of endeavour, was — not, in the first place, and beyond all things, the *interest of the nation* — or, in other words, the *greatest happiness* of the whole number of the members of the *community* — but a something or other, a sort of matter the value of which consisted in something which it had to do with the *monarch*.

5. Vesicular as may be seen to be the character of this same *end in view*, the *means*, as indicated by the *reasons* by which it has been *preceded*, will not (it is believed) be found to mismatch it. *Reasons* I style them without hesitation; the purpose for which they are exhibited being manifestly *that* for which, on the occasion of a proposed law, reasons are made to accompany it: namely, the obtaining for it a sentiment of approbation at the hands of readers. But as they successively enter upon the stage, not *reasons*, — not, as grammarians say, *sentences*, — as logicians say, *propositions*, — but *allusions to reasons*, the several locutions will be seen to be: — allusions, nothing more.

6. As to the *order* in which I proceed to lay them before you, my fellow-citizens, it is that which the learned draughtsman has given to them: it is not for me, it is not for a commentator, under any such notion as that of improvement, to substitute a different one. Thus, then, they may follow:—

7. — I. *Bubble or vesicle the first.* "*Le grand accroissement que l'état a reçu:*" the great increase which the state has received. *Increase* indeed! and you, my fellow-citizens, you are now *seeing* — and the state thus increased (not forgetting the king of it) is now *feeling* — some of the *consequences* of this increase. But now mind the spirit of oppression which lurks under the word *increase:* the least populous community, Holland, the *principal* one: the most populous one, Belgium, no better than an *accessary* one—forced into subjection under it.

8. — II. *Bubble or vesicle the second.* "*Le rang qu'il prend parmi les nations de l'Europe:*" the rank which it takes among the nations of Europe. In comparison of the *rank of the nation*, what signifies the happiness of the individuals of which it is composed? Just nothing: for, amongst all their reasons — thirteen, or thereabouts, in number — nowhere is any mention vouchsafed to be made of it. Rank of the *nation!* Say rather, rank of the *king: that* being the rank preserved to the functionary, the rank of whose father stood expressed by the inferior denomination of *stadtholder:* of his father whose successor he was in the *Dutch* provinces; the rank of king being preserved or restored (which you please) to the son, upon the expulsion of Louis Bonaparte, and fructified by the increase of power given to it by the addition of the *Belgic* provinces.

9. — III. *Bubble or vesicle the third.* "*La diversité des élémens dont il est formé:*" the diversity of the elements of which this same state had been formed. Oh yes! *diversity* but too great: reason sufficient to have prevented the formation. Fellow-citizens! the consequences are before your eyes.

10. — IV. *Bubble or vesicle the fourth.* "*Des*

* In my proposed *Constitutional Code*, provision is made against all evil from this source. See Ch. VI. *Legislature*, § 18, *Attendance*, § 20, *Attendance and Remuneration*, § 22, *Self-suppletive Function*.

† This report commences in page 157 of the "Collection des Constitutions," &c. tom. iii. Paris 1823.

‡ Page 160, line 10.

intérêts plus compliqués:" interests more complicated. Oh yes! forming against the junction, a reason, the strength of which is as the degree of the complication. To the junction of the two *states* it is that this reason bears relation. As to the question between the *chambers*—between chambers one and two—what has this same complication to do with it? Find out who can.

11.—v. *Bubble or vesicle the fifth: allusion made to experience.* "*Nous ont imposé le dévoir de ne pas dédaigner les leçons de l'expérience:*" they (to wit, the above-mentioned four bubbles) have imposed upon us the duty of not disdaining the lessons of experience. The reason here alluded to is that which, further on, I shall have occasion to spread out before you in some length and breadth, under the appellation of *authority-begotten prejudice.*

12.—vi. *Bubble or vesicle the sixth: prevention of precipitation.* "*Pour empêcher la précipitation des deliberations:*" to prevent the precipitation of the *deliberations* themselves: this is what is *said.* To prevent the precipitation of the *result* of the *deliberations:* this is what cannot but have been *meant.* By addition of the deliberations of one assembly to those of another, how can prevention, or so much as diminution, be applied to the deliberations of the first? Of any such addition, decrease in the quantity of *time* employed in deliberation—decrease (as before observed) rather than increase—presents itself as the natural consequence. Why? because in the eyes of opponents in a first chamber, the greater the opposition expected in another, the less urgent will be the need of opposition in that same first chamber.

13. And as to the deliberation thus added,—which is the chamber in which, if at all, it has place? *Answer*—That in which it is least assured of having place: the other being the principal seat of the legislative business,—the only one in which the more important part of the business can originate: the only one in which any regular attention to the business stands assured: not to speak of its being the only one in which an unbroken unity of interest and affection with the community at large has place: the only one in which any efficient sense of responsibility to public *opinion*—to the opinion of the community at large—has place.

14.—vii. *Bubble or vesicle the seventh: a dike against the passions.* "*Pour opposer, dans les temps difficiles, une digue aux passions:*" to oppose, in difficult times, a dike to the passions. Here again behold the Dutchman. A Dutch image, not a Flemish one, is this of the *dike.* A dike indeed? Say—as well or rather—an additional impulse,—an impelling *gale.* If the passions meant are the *angry* passions (and such they can never fail to be,) what will naturally be the effect of any such dike? When the deputies of the people, by labour to an unlimited amount, have prepared what they think will be for the benefit of their constituents,—what is easy enough to conceive and understand is—how the thought that there is another body of men which has an interest different from theirs, and mostly opposite, by which this child of their labours and affections is continually in danger of being thrown out of doors—how this thought (I say) should stir up a gale of the same angry passions:—how it should produce a *calm,* or moderate any such gale, seems not quite so easy to conceive.

15. As to the *effect* of those same angry passions, when it consists in the proposition of a law not agreeable to the second chamber—here indeed the dike comes into existence and into use: it does keep the proposed law—if not from *coming* in, at any rate from staying in, and becoming an *actual* law. Somewhat of a misconception seems here to have crept in: a *storm,* or the *cause* of one, taken for a *dike.*

16.—viii. *Bubble or vesicle the eighth: barrier to the throne.* "*Pour entourer le trône d'une barrière contre laquelle se briseraient les factions:*" to surround the throne with a barrier against which factions will break themselves to pieces:—in plain language, to deprive of their wished-for effect the opinions and wills of those, whose opinions and wishes are, as near as they can have been made, to the being the opinions and wills of the whole population of the nation, or at any rate of the most enlightened part of it. By *factions* is meant, as far as anything to the purpose is meant, *parties* entertaining designs and using endeavours of a nature detrimental to the *interest,* or say the *happiness,* of the whole community, or the major part of it. This being the meaning, that which is *presumed* by the reporter is, that evil to the community is more likely to be prevented by men who, not being chosen by the people, have an interest opposite to that of the community at large, than by men, who, being chosen by the people, have *not* any interest opposite to that of the community at large. If such be really the truth, something a little like proof of it might not have been amiss. But *presumption* is shorter than *proof,* and saves trouble.

17.—ix. *Bubble or vesicle the ninth: security against usurpation.* "*Pour donner à la nation une parfaite guarantie contre toute usurpation des agents de l'autorité:*" to give the nation a perfect security against all usurpation by the agents of authority. Usurpation? of what? this is not said. At the cost of whom? this is not said. By whom? this is not said. What is not said but necessarily implied is, that there is something *good,* which some authority or other is inclined to

usurp, and which a second chamber, constituted as proposed, is not at all inclined to usurp; or at any rate is not so much inclined and moreover able to usurp, as is a first chamber composed of the deputies of the people aptly chosen, as above. Thus vesicular is the security against *usurpation.*

18. — X. *Bubble or vesicle the tenth: example of powerful monarchies.* "*A l'exemple des puissantes monarchies:*" after the example of powerful monarchies.

19. — XI. *Bubble or vesicle the eleventh: example of flourishing republics.* "*A l'exemple des républiques florissantes:* after the example of flourishing republics. Monarchies mentioned first — mentioned before republics, of course. Thus commanded Madame *Etiquette.* And see now what, under the management of our learned draughtsman, comes of obedience to her commands. To *powerfulness* the precedence is given before *flourishingness;* flourishingness meaning, if it means anything to the purpose, *happiness.* As to powerfulness — *purposes* to which, in the case — whether of an individual or a community — it is applicable, two: preservation of himself or itself against wrongs, *one:* inflicting wrongs, another and somewhat different one. Now then, mark the practical consequence of the prevalence thus given to *powerfulness:* applied to the first, it is useful and desirable: applied to the other purpose, it is mischievous and undesirable. Employed thus without modification or explanation, the word is but too apt to be employed in the endeavour to promote that one of the two purposes which is purely mischievous.

20. — XII. *Bubble or vesicle the twelfth: non-adoption of certain foreign institutions.* "*Pour operer cette division* (en deux chambres) *nous n'avons pas adoptés des institutions etrangères, qui pourraient ne pas bien s'amalgamer avec nos institutions nationales:*" to effect this division into two chambers, we have not adopted foreign institutions, which would be liable not to amalgamate well with our national institutions. True: not adopted by the royal receiver of the Belgians under his yoke, were the institutions of any nation foreign to both the nations so joined together. But — what has been so much worse — joined and forced together were these two nations, the institutions of which amalgamated so far from well, the one with the other.

21. — XIII. *Bubble or vesicle the thirteenth and last: something done with the principles of the division.* "*Nous avons puisé les principes de la division, dans l'esprit qui l'a fait adopter:* we have drawn the principles of the division from the *esprit* which has caused them to be adopted. As for *esprit*, give the meaning of the word who can. Were I obliged to make the attempt, the word I should render it by would be — *gas.* This thirteenth makes (you may perhaps think) no bad finish to the twelve bubbles or vesicles, its predecessors.

22. Fellow-citizens! here you have — not only two packets of mutually opposite reasons, but two somewhat different *manners* or *modes* of reasoning. You will judge.

23. Tempting is the invitation: but the *above* is everything that belongs strictly to the present question. For any ulterior examination, no duty calls: but to have stopped short at any part of this reasoning would have been a denial of justice.

§ V. *Sole proposable Locator for a Second Chamber, a King. Further Objections hence.*

1. Now as to *location.* In the present case, sole authority *proposed* for the placing of men in this same second chamber is — the King. Sole *proposed:* I add — or *proposable:* and this — whatsoever be the *duration* of the authority of a member of this same chamber: whether hereditary, as at present; or for life only, as in the case of one of the *Netherlands* chambers; or for a limited term of years, as in the case of the *Senate* of the Anglo-American United States *Congress.*

2. Too true it is — that, in the case of that same republican second chamber, — the authority by which the function of locating its members is performed, is — not that of a single person, but that of a numerous body. But, in that case, for the exercise of this function otherwise than by a king, there exists a set of hands which in the present case has no place, and by those hands exercise is given to it accordingly. Those hands are those of a body composed of the "legislatures" of the several states.*

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* Comes upon the carpet, on this occasion, the topic of *local legislatures.* Great (it has been said) is the need of them in France: but the demand might be supplied without detriment to the authority of the existing legislature — namely, by the constitution of *sub-legislatures*, having authority in respect of certain local subject-matters alone: — and *that* subject in everything to the existing all-embracing legislature. Analogous in some sort to these sub-legislatures were Necker's *Administrations Provinciales.*

For the formation of the territories of these several sub-legislatures, the existing departments might be employed. They might be taken as they are, or laid together in any number.

Advantages thus obtained are the following: —

1. Having appropriately instructed public-opinion tribunals in as many places as there are sections of territory, having each its own legislature; in a word, so many smaller metropolises, instead of no more than the one large one.

2. Having in each sub-legislature a *nursery* for the supreme legislature: a school of appropriate aptitude, in all its branches, for the business of legislation. In this may be seen the peculiar advantage alluded to.

3. Having, for local purposes, a legislature by

3. In a king, forget not, then, that you have a functionary, whose interests are, to an immense extent, in direct opposition to that of the great body of the people—a functionary, who to that *interest* by which every man is, on each occasion, urged to sacrifice to his own happiness that of all besides, adds the *power* of effecting, to an immense extent, that sinister sacrifice.

Who can deny the existence of this opposition of interest? Let us see. For, behold the *means* he has:—but, of this presently. Such being the nature of man, how can I help its having place? And, should I leave it unmentioned, when your happiness is in so great a part at stake upon the clear conception and full consideration of it?

4. In a chamber of *peers*, if continued, you will have a body of men, whom it will be in the *power* of the *king* to render contributory to that same sinister sacrifice. *Will* and *power* united, does not the effect follow?

5. By the same *means* by which he would have it in his power to render the chamber of peers contributory to this same sinister sacrifice,—by this same means, *but* for one obstacle, would he have it also in his power to render your deputies correspondently, and with like effect, contributory to it. This obstacle is—the *dislocative* power, retained in the hands of the constituents of those same deputies. This power, it is not proposed, nor will it be proposed, they should possess with reference to the members of the house of peers, or of any other sort of *second chamber*, composed of members placed in it by the king.

6. Such being the king's *interest*, of this same interest will he, of course, on every occasion, obey the dictates: continuing the sinister course to the utmost length, that his imagination and his judgment join in presenting to his view as consistent with his present safety and convenience.

7. Well: now for a few particulars of these same courses. Like any other man in his place, this same all-powerful functionary will, at all times, have among his endeavours—to *obtain*, and so far as is consistent with *enjoyment* to *retain*, the possession of all imaginable instruments of enjoyment in all their shapes:—money, to wit, and money's worth, power in all its shapes—*that* power free from responsibility:—add reputation, respect, and love:—of the two latter as much as possible, and how little so ever merited:—add, moreover, factitious honour and dignity; vengeance as far as provoked by resistance; ease as far as consistent with enjoyment; security for all these possessions—most entire: security at whatever expense to the people produced, or endeavoured to be produced.

8. For all these same instruments of enjoyment, the cupidity of man in all situations is such as all men feel and see. But, in the situation of king, it is in a particular degree insatiable. Consciousness of the power is continually stimulating and sharpening the desire.

9. He who wills the *end*, wills thereby all necessary means. In the present case, the means are those, for the designation of which the words *corruption* and *delusion* may be employed. On this occasion, *corruption*—*political corruption*—requires complete dissection, which it has never yet had. My children, wait a moment: the *theatre* will open presently.

10. "What a picture"—(I hear some of you saying)—"What a picture, old and

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which the labour and expense of resorting to a central legislature from all distances would in great part be saved.

4. Having, for the management of those particular branches of business in question, managers, possessed of a better acquaintance with the local circumstances by which a demand for legislation is presented, than can be possessed by men having their abodes at distances more or less considerable.

Those advantages might be established, by giving (to each department, for example) a sub-legislature of its own: or if by this means the number of sub-legislatures would be too great, *unions*, wherever they presented themselves as desirable, might be effected. An analogous institution may be seen in Necker's *Administrations Provinciales*.

To the thus proposed system of sub-legislatures, substitute a *federal* government—such, for example, as that of the Anglo-American United States,—such would be the disadvantages (so it will be seen on the first mention of them) as would greatly outweigh the above-mentioned advantages.

First comes the extinction of the whole of the existing official establishment.

1. Intolerable would be the mass of suffering on the part of individuals, if the loss of the masses of emolument attached to the several situations remained uncompensated: little less grievous the suffering on the part of the public at large, if compensation were made.

2. This evil would be but a temporary one. But the danger of ill blood, ending in civil war, from collision of interests, from contrariety, real or imagined—would be a perpetual one: and

3. While the operation was going on, everything would be in a state of confusion: all the rights at stake in a state of uncertainty.

4. This additional and indispensable circumstance being brought to view, behold now the additional objections which it opposes to the continuance of a second chamber. Alas! what a task is this which I have set myself! the subject—this part of it—so unpleasant a one! to myself, such it really is—whatsoever it may be to any one else. If my object were to *please*—to please for the moment—if it were *that*, and nothing more valuable, nothing would I have to do with a subject so invidious, so *scabrous*, as you would call it. But my object is to be *useful*—to place before your eyes the plain truth, on a subject universally acknowledged to be the most momentous. This being my object, no choice have I but to proceed.

gloomy-minded man! are you giving us of human nature! as if there were no such quality as disinterestedness — no such quality as philanthropy — no such quality as disposition to self-sacrifice — in the whole species: no such individual as a *king* taking a pleasure in his duty — doing, on all occasions, his utmost to promote the happiness of his people!

"Notions such as these! and with proofs to the contrary—proofs so brilliant and so indubitable — all the while before your eyes!"

11. Now for my answer: — My children, I admit all this. I do not deny it: I cannot deny it: I wish not to deny it: sorry should I be if it were in my power to deny it. Not the less do I maintain the fact — that, of the human species, as of every other, the very existence depends upon the established, and almost uninterrupted habit of self-preference.

12. But I will not — for I need not — trouble you with the developement of this truth. I will not — for I need not — attempt to draw you into any such dark recess as the den of what is called among you *metaphysics*, in which the springs of human action are looked into and hammered at. I need not. And why? Even because my belief in this truth prevents me not from believing in any of those things which you suppose me to deny.

13. Yes: I admit the existence of *disinterestedness* in the sense in which you mean it. I admit the existence of *philanthropy* — of philanthropy even to an all-comprehensive extent. How could I do otherwise than admit it? My children! I have not far to look for it. Without it, how could so many papers that have preceded this letter, have come into existence? I admit the existence of a disposition to self-sacrifice: How could I do otherwise? Could I deny the existence of the work of the *three days?*

14. Yes, I admit — not only the possible existence — I admit the actual existence of a *king* who takes a pleasure in doing his duty, —of a king who, on all occasions, does his utmost to promote the happiness and interests of his people.

15. Oh how charming to my heart is the impossibility of an inward refusal to those admissions! But my children! it is on what has been seen most commonly to happen, — and thence presents itself as most likely to happen — it is upon *this* that all practice, if it has any pretension to the praise of prudence, must be built.

16. All men are not *Frenchmen.* Frenchmen have not been at all times what they are at the present times. Even Frenchmen cannot be depended upon for being, under all circumstances, what they are under existing circumstances. What if they could be? All Frenchmen are not men of Paris: all men of Paris are not *men of the three days.*

17. Then as to kings. All French kings have not been Louis Philippes. No other king ever was what Louis Philippe is. No other king of the French ever will be what Louis Philippe is. Louis Philippe himself will not continue to be what he is, if a chamber of peers is suffered to continue, or any second chamber is constituted in the room of it. No: Louis Philippe himself will not continue to be what he is, if any such temptation to change is suffered to have place.

18. And why is it that, even if he *could,* no other king could, with such a power in his hands, be depended upon for not abusing it? My children, I will tell you why.

In the situation of *king, cupidity* for the above-mentioned good things — cupidity for all sorts of good things — is essentially insatiable. Yes: in *that* situation, above all others, your proverb is exemplified — *l'appetit vient en mangeant.*

19. Come — I will give you an example. I will not speak of a *Ferdinand the Beloved* — I will not speak of a *Don Miguel.* You have heard of a *George the Third* — I will speak to you of this same George the Third.

20. *Best of kings* was the title bestowed upon him:—*best of kings,* by acclamation—by general acclamation. To George the Third, *best of kings,* as to *Voltaire, prince of poets,* during his lifetime: witness Mount Parnassus. Look, then, at this *best of kings:* and then let each of you ask himself—what can I reasonably expect at the hands of an *average* king? and in particular of an average king, with a chamber of *peers,* in these same royal hands, to work upon, and work with, and mould to all his royal purposes?

21. Well then: now for a specimen of him.

I. The commencement of his reign was distinguished by the endeavours of many years to ruin a man for an indecorous word: this endeavour ended in making the man's fortune.

22. — II. His income was somewhat less than that of your Charles the Tenth: it did not satisfy him.

23. — III. In the course of that same reign, nine different bankruptcies did he commit. Nine different times did he make those Lords and Commons of his pay those debts which he had contracted without their consent. So at least it was said in that same House of Commons, and no contradiction given to it.

24. — IV. As often as a tax was imposed upon all other incomes, those of all other functionaries included, he caused his own to be exempted from it.

25. — V. At his instigation, a king of Sweden afflicted Russia with a war as completely unprovoked as any that is to be found in history. To feed this war, he laboured to plunge into it his own country: — he failed; and my latest breath will be cheered with the thoughts of having been the author of that failure.

26. — VI. He shared, with my virtuous but

misled friend, Brissot, the authorship of your revolutionary war, with the debt under which we are everywhere still groaning.

27. — VII. When war was made by England upon Spain (it would be foreign to the subject to inquire upon what grounds,) he caused it to be begun in a piratical manner: and of this manner seventeen millions sterling, placed at his private disposal, was the fruit: the faith of Parliament, — his own, with that of his Lords and Commons, — being thus broken, to the injury of the men at the price of whose blood the booty had been earned: the work of blood and plunder being begun by surprise — no declaration of war made, if at all, till this booty had been secured.

28. Once more. If — with peers, and nominees of peers, for instruments of his *goodness* — such a king was the best of kings, — what think you of an average one?

29. Such was he with his *house of peers.* Not but that for him to be what he was with those same instruments to work with—a *house of commons*, such as those he had, would have been sufficient:—a house of commons, nominated by peers, or by men longing to be peers — a house of commons such as he had, and such as his successors and their subjects are destined to have, — unless, peradventure, on some beautiful day, London should pluck up spirit enough to take a leaf out of the book of Paris.

To warrant a king in keeping in training, upon appropriate principles, his men-of-all-work, an appropriate maxim has been deemed necessary. Accordingly, of the number of axioms laid down and acted upon is this axiom: *Aptitude is as opulence.* The situation being given, you allot to it a mass of emolument: this done, you take any man whatsoever, and place him in it: no conditions of eligibility — or, as we say, no qualifications — of any sort that have any the most distant relation to the business of the office, do you require him to possess. The emolument received by him does everything that is wanted: the larger the mass of it, the higher will be his degree of aptitude. If in that derivable quality any deficiency happens thereupon to manifest itself, it is a sign that the mass was not large enough. You accordingly add more to it: if still there is a deficiency, real or supposed, you add more still: and so *toties quoties.*

By cramming them with money, kings are, according to this maxim, in proportion to the quantity of the money, made fit for reigning. Fellow-citizens! is this really so? Consider and answer to yourselves.

By cramming, fowls are fitted for the table: true. By cramming, the queen-bee is fitted for her throne: true. By that same process, when then will kings be fitted for this same seat? — when by that same process sharks are tamed, and rendered fit for the saddle, as by Arion dolphins.

To the process of cramming, in the case of fowls, nature sets bounds. So does she in the case of the queen-bee. But, in the case of a king of England, or any of his creatures, where are the limits set by anything or anybody?

Yet, when and in so far as they are honest, this is the thing laid down by an English statesman, and built upon: — yes; built upon in practice. But, weak as they are, can you really believe them so to be to such a degree as this?

Fellow-citizens! here is no exaggeration: it is the simple truth: my credit is at stake upon it. We have a minister, who, under the Duke of Wellington, governs the country; and, under nobody, governs the House of Commons. His name is Sir Robert Peel. I took him t'other day in hand. I laboured hard to persuade him — that *money* is not aptitude: — money, and, in particular, public money, wrung from those by whose labour the money's worth was produced: — that money is not *honesty;* that money is not *knowledge;* that money is not *judgment;* that money is not *active talent*, applied to business such as that of the office. No: all that I could do, I could not bring him to perceive, that a man's having had experience in that same business gave a better chance for his being fit for the doing of it, than could be given by any money that could be put into his pocket.*

Such management, guided by such intelligence, goes with us by the name of government. The so-governing and so-governed, you may perhaps look upon as not ill fitted to each other.

Labour in vain was all this labour; and so it will continue to be, till those, by whose labour the money so disposed of is produced, take up the matter, and say, that *that* which the labourer is content to take for his hire, *that*, in this case, as in every other case, *that*, be it ever so little, is sufficient for him to receive.

Yes: labour in vain has been hitherto all this labour. Lost it has been upon the counterfeit representatives of the people. Still, among them, the cry is — *Aptitude is as opulence.* Lost it has been even upon their so-called *constituents.* No man have I prevailed upon, as yet, to join with me in proclaiming — *Aptitude is not as opulence.*

§ VI. *Corruptionists unavoidably the Members of any Second Chamber — Objections thence — Corruption dissected.*

1. Fellow-Citizens! I must now speak to you of corruption and delusion. Intimately connected are these two things with the subject-matter of this inquiry; so likewise (as you will see) with one another.

* See the miscellany, intituled *Aptitude maximized, Expense minimized.*

2. By the words *corruption* and *delusion* (*delusion* in English, in French *illusion*,) are designated, in both languages, not only the effect produced, but the *cause* of that same effect: not only the *effect* which will be produced upon the members of this same second chamber in case of its existence, but the *cause* by which the production of that same effect will be seen to be unavoidable. For, such in both languages is the poverty of language; and such, in and by both of them, the confusion spread by that poverty over so considerable a portion of that same instrument of thought and converse.

3. Corruption, political corruption, is a sort of thing which is continually in every pen and every mouth. But, in the course of my inquiries, some shapes in which it makes its appearance to a vast extent, have presented themselves to my view — some shapes, of which it has not happened to me to see or hear mention made anywhere else.

A complete dissection of this same corruption is accordingly an operation, which presents itself to me as being, on the present occasion, an indispensable one. Be the shapes of it in which you exclude it ever so numerous, as good might you leave it unexcluded in all, as leave admittance to it in any *one*.

4. It is not an agreeable one. To myself, I am sure, it is not: to you I cannot expect it to be. Of this I thus give you warning: whether he will submit to the drudgery, will thus depend upon each man's choice.

Thus explained, —

5. By corruption you will understand — any act or state of things, by which, by means of its operation on his *will*, a functionary is induced to act in a course, deviating in any manner from the path of his duty.

6. By delusion, effects producible by corruption are produced by an operation applying to the understanding: to the *will*, no otherwise than through the medium of the understanding.

7. My children! you see already the practical use there is in holding up to view — the need there is of bringing to view — everything that can be contributory to the production of this maleficent effect — every occasion on which it can happen to it to be productive. This is not a question of mere words. Good government depends upon — or rather is the same thing with — the undulating progression of each functionary in the path of his duty. In so far, then, as his means of happiness depends upon the goodness of the government, the happiness of every man that reads this depends upon the non-deviation of the several functionaries from the path of their respective duties. Of the exhibition thus made, the end in view is — the engaging those on whom it depends, to minimize the *quantity* of the matter capable of this operation, and the number and extent of the *occasions* on which it is capable of producing this effect.

8. On this occasion have patience with me, and you will see brought to view, for the purpose of their being guarded against, ways and means, in and by which the effect of corruption is produced — ways and means to no small extent outstretching all that as yet have been generally in view.

Half a dozen of these you will see — or thereabouts — more or less: as they are presented to your view, indication will be given of their supposed novelty.

9. By *matter of corruption* understand everything capable of having corruption for its effect, and thereby applicable by man to the purpose of producing it: *matter of corruption*, say for shortness. Say also, upon occasions operating as an *instrument* of corruption.

10. The matter of corruption is either the matter of *good* or the matter of *evil*. Yes, the matter of *evil*: for with this effect is the matter of *evil* capable of operating, no less than is the matter of good; — yes: and with even still greater force and efficiency: capable of operating, and to a vast extent, and with a deplorable degree of sinister efficiency, — actually in use to be made to operate.

11. Of the several modifications of the matter of good you have had already — if not a complete list, — exemplifications in large number: — namely, those which, in speaking of the situation of the functionary called a king, were exhibited in the character of objects of his *cupidity*, or say *concupiscence*. So many modifications of the matter of good, so many *shapes* in which, in the character of an *instrument* of corruption, the matter of corruption is capable of operating.

12. Of the matter of evil, all the several modifications capable of contributing to the production of this effect, you will have in view — in proportion as you have in view those evils, which are capable of befalling a man, and being to this purpose employed, in such manner as to be made to appear to him to be continually about to befal him, without exposing the employer to suffer for so doing at the hands of the judicial authority.

13. In this case, the matter of good acts (you will see) in the character of matter of *reward:* matter of evil, in the character of matter of punishment.

14. Behold now a circumstance by which proof and exemplification is afforded of the truth — the important truth — that, in the character of an instrument of corruption, the force and efficiency of the matter of evil is greater than that of the matter of good.

15. By the matter of good, — that is to say, by the eventually expected receipt or enjoyment of it, — how great soever be the value of it, the *power of choice* is not to common conceptions considered, and in common

language accordingly spoken of, as *taken away:* whereas, by the matter of evil, — when the amount of it rises to a certain height, the power of choice *is* commonly considered and spoken of as being taken away: as commonly, as, by a loaded pistol applied to a man's breast, accompanied with the demand of his money, the power of choice is considered as being taken away.

16. Note here — that the same portion of matter operates in the way of matter of *good* or matter of *evil*, according as it *comes to* the individual in question, or *goes from* him: by *coming to* him, it operates as matter of *good;* by *going from* him, it operates as matter of *evil:* and, by *going from* him, it operates upon him with much greater force than by *coming to* him: *coming to* him, it operates no otherwise than in the way of *reward; going from* him, it operates in the way of *punishment.*

17. Take any man for example, — and suppose the value of the whole amount of his property to be £100: with much greater efficiency, in the way of producing compliance at his hands, will the apparent probability of his eventually *losing* this same £100, than will the same apparent probability of his *gaining* £100.

18. For holding up to view an evil of such immense magnitude, and thence presenting the demand for remedy, — you will (I flatter myself) not be backward in recognizing the demand for some means of designation: a demand as urgent as that which gave existence to the denominative *corruption*, in the case where the matter of *good* is the instrument by which the maleficent effect is produced. No such appellation being in use, it seems to me, that by giving the requisite extension to the existing appellation *corruption*, the deficiency may, in a more convenient manner than by any other word or locution, be supplied; *compulsory*, or say *compulsive*, or else *intimidative*, the corruption being, in this case, styled; *remunerative** in the other case.

19. Now, as to the various shapes in which the matter of good, operating in the character of an instrument of corruption, is capable of having existence. One of them is *patronage.*

20. Among the modifications of the matter of good brought to view, as above, you may have made observation of the various *situations*, of which the official establishment of a community is composed or composable.

21. The happily rare case excepted, — in which the incumbents follow one another in the way of hereditary succession, — in the case of every one of those same situations, for every person or set of persons *placed* — *located* say — there cannot but be a person or set of persons, by whom he or they are *located* — say a locator or locators. For any such *locator*, *patron* is the term in common use: *patronage*, the name of the portion of the matter of good, possessed by him, in such his capacity.

22. Here then — of any such situation the possession cannot have its value, and consequent efficiency in the character of an instrument of corruption, but the *patronage* of it must have a correspondent value.

23. In the case in which an ecclesiastical benefice is the situation in question, the patronage is denominated an *advowson.* This same advowson possesses a marketable value, just as any ordinary estate in land does: ten years' purchase perhaps, more or less. This then, or thereabouts, subject to correction, may be stated as the relative value of the patronage of any such office. This, and *no* more, may be stated as the value of the patronage of an office to the patron, when the individual, whom he locates in it, is any person taken at large; many more years' purchase may it be worth, if the locatee, whom he locates in it, is a son† or other near relative, for whom to this same amount he would make provision out of his own income, were it not for the extrinsic source.

24. Over the *possession* of a profit-yielding situation in the official establishment, *patronage* has this advantage — that, whereas to the number of such situations which, even under a corrupt form of government, one and the same individual may have the possession of, there is some limit, — to the number of those which he is capable of having the patronage of, there is not any limit.

25. In England, immediately or by the intervention of middlemen, with exceptions to a comparatively inconsiderable amount, the *king* has the patronage of all the several situations of which the whole of the official establishment is composed.

26. Of the matter of corruption in this shape (need it be said?) is composed, the motive, by which men are induced to do their utmost for

* [*Remunerative.*] — *Allective* would in this case make a better match with *compulsive* than *remunerative* does: *allective* from *allicio:* but unfortunately, *allective* is scarcely as yet in the languages.

† [*Son.*] — Thus, in that part of the judiciary department, which is composed of the judicatory styled the Court of Chancery, no fewer than nine lucrative offices are in the possession or sure expectancy of a son of the ex-Chancellor the Earl of Eldon: aggregate income £9,000 a-year, more or less: about one half for this long time in possession: all those conferred and "obtained on a false pretence" — obtained by an act which, by a statute still or till lately in force, was constituted, in the case in which it has for the agent a person other than a member of the official establishment, acting as such, [an offence which] subjected him to the punishment of being imprisoned, whipt, or transported to a distant dependency, there to be kept in a state of servitude. Add, or to be put in the pillory; till this mode of punishment was a short time ago abolished: false pretence, that of an intention to do the business of the office.

the upholding of a form, system, and practice of government, on which the appellation of *matchless constitution*, in the endeavour of covering its deformity by a veil of unmerited laudation, is with such unblushing perseverance bestowed; the possessors and cravers of the matter of corruption in this shape, all the while bestowing upon themselves, and one another, the praise of disinterestedness, and so forth.

27. For the production of the maleficent effect styled *corruption*, not necessary is it that there should really be any person in whose mind any such *intention* has place as that of administering the matter of corruption, for the purposes in question, or for any other. Why not necessary? *Answer*—Because any person, disposed to earn the wages of corruption, on sight of any other person occupying a situation which places in the hands of the occupier any adequate mass of the matter of corruption, together with the means of benefiting himself by the administration of it, will presume the existence of an adequate *disposition* so to administer it, and will act accordingly.

28. From this state of things results the need—the urgent need—of appellatives, adequate to the purpose of planting and keeping in one's mind, the distinction between the two species of *corruptionists*—the *intentional* and the *unintentional*:—a distinction which (it is believed) is now, for the first time, held up to view.

29. Moreover, here may be seen the place for bringing to view the several *classes* of persons to whom the appellation of *corruptionists* may, with equal and indisputable propriety, be applied—namely, *active* corruptionists, the *corruptors*; *passive* corruptionists, styled, by means of the termination thus employed in the ancient law French language, *corruptees*—in modern French, *corrompus*.

30. This distinction borne in mind, with indisputable propriety may (it will be seen) be applied the appellations of *corruptionist* and *corruptor* to every person possessing power of patronage: the corruption operating, as such, with a degree of efficiency proportioned to the magnitude of such his power: to every such patron, and in particular to every *king*.

31. What! to Louis Philippe? Yes, to Louis Philippe, and with as indisputable propriety as to George the Third, of blessed memory, or any one else.

32. My children! think of the *Medecin malgré lui*: he is well known to you. Well, then, here you may see a *roi corrupteur*—a *roi corrupteur malgré lui*.

33. But—what should he decline giving his concurrence to any arrangement, by which, without production of evil to a preponderant amount, in some determinate form, the *quantity* of the matter of corruption, and thence the *efficiency* of it, would be diminished? The supposition is an unpleasant—an invidious—one; the answer, needless.

34. For production of this same maleficent effect, styled *corruption*,—as little necessary is it that the *matter* by which it is produced should, in any *determinate* shape, be present to the mind on which the effect is produced. Why not necessary? *Answer*—Because, to the imaginative faculty of a mind appropriately disposed, it will naturally present itself in the most attractive shapes and colours—the shapes being those of the most valuable lucrative situations, or other benefits, which the patron looked to has it, or is supposed to have it, in his power to confer.

35. Hence may be seen—that, of the matter of corruption, when in an *indeterminate* shape, the efficiency is naturally not only not less, but much *greater*, than when confined to any *determinate* shape.

36. And now may it be seen—why and how it is, that corruptionists—the most maleficent of corruptionists, active and passive—how it is, that they are so ready to make law upon law against *bribery*—leaving corruption, in its *compulsory* and so much more efficient form, unrepressed, evil in so efficient a manner and degree promoted. Making laws against compulsion, in the form of *bribery*, they combat it in a form in which, it being, and frequently in a ruinous degree, costly to themselves, they are not unwilling to suppress it: leaving it unrepressed when in the compulsory form, they thus give establishment to it, in a form in which it not only is so much more efficient, but costs them nothing.

37. In so far as they are reduced to have recourse to bribery, the law is *against* them; and, in this case, to no small extent, they are under the necessity of laying themselves at the mercy of men whose morality they are thus themselves corrupting: at their mercy, not only in respect of the fulfilment of the illegal bargain, but also in respect of forbearance to turn against them, and join in prosecuting them for it. On the other hand, in so far as the form they give to the operation is the compulsive form,—they have, and to a great extent, the law—not simply neuter, but actually *on their side*. Thus it is, for example, to the whole extent of the relation of *landlord* and *tenant*: the landlord turning out, or, by the hand of the law, in various ways tormenting his tenant, in the event of his not giving his vote to the candidate, how unfit soever, whom it pleases the landlord thus to force upon him.*

* 1. Witness a *Duke of Newcastle;* who, if report says true,[a] turns out of their habitations or other possessions, no fewer than seventy heads of families, for having contributed towards the

[a] *Morning Chronicle*, 27th September 1829.

38. For the prooucrion of this same maleficent effect styled *corruption*, as little necessary is it that the individual, to whom application of the matter of corruption is made, should be the very individual at whose hands the maleficent conduct — the breach of public trust — is endeavoured to be produced. It may be any other individual, with whom the breach in question is connected by any adequately strong tie — whether of *self-regarding*, or of *social*, or say *sympathetic*, interest.

39. Hence it may be seen — how far from being sufficiently grounded is the notion, according to which, by being secured for life in the possession of a lucrative office, in such sort as not to stand exposed to any danger of being dislocated,—a man is rendered corruption-proof: secured, as he thus is, against corruption, in so far as effectible by application made of the matter of evil in that *one* shape.

40. Corruption-proof? — Yes; if, to that same purpose, he does not stand exposed to the being corrupted by the matter of *evil* in any *other* shape.

41. Yes; if, to the purpose in question, he does not stand exposed to the being corrupted by the matter of *good* in *any* shape.

42. Yes; if there be no other individual, with whom he stands connected by any such tie as above mentioned.

43. Here accordingly may be seen the imposture so often endeavoured to be practised, by the boast expressed by the word *independence:* the condition being in fact that of *irresponsibility:* that is to say, non-exposure to suffering in this or that shape, or in any shape, for any act of maleficence committed by the individual in question, in the situation in question.*

44. Imperfect and inadequate would be the dissection here made of political corruption, if the non-proximate as well as the proximate causes of the disorder were not brought to view. Of the non-proximate there may be any number of *removes*. Non-proximate of the *first remove* may be seen in the instance of *wars* and *distant dependencies*. Necessitated by the one as well as by the other are lucrative offices.

45. Wars and distant dependencies bear to each other both relations, — that of cause and that of effect. Of distant dependencies, the possession on the one part, the cupidity on the other part, beget war: war has sometimes on the one part distant dependencies for its fruit.†

46. *Corruption* and *waste*. Between the two evils thus denominated, relations have place, which, on this occasion, it may be of use to have in view.

47. Whatsoever portion of the matter of good is received or looked for by any functionary of government as such, in particular if received at the charge of the government, is, as hath been seen, capable of operating in the way of corruption.

48. But it follows not that it is in any part of its employment in waste: not only whatsoever is necessary to the support of the government, but whatsoever else is capable of being employed in such manner as to be productive of a balance in the scale: not only is not employed in waste, but ought to be employed in the manner in which, by the supposition, it is employed.

49. To a not inconsiderable extent, corruption may have place without waste. For, if by marks of general kindness on the part of one functionary — and in particular a functionary of superior order — without money or money's worth expended, another functionary be inveigled into a breach of official duty: here is corruption, but here is not any waste.

50. Natural indeed, but (as hath just been seen) narrow-sighted and erroneous, would be any such maxim as — Let no institution, by which corruption is *capable* of being produced, be endured.

51. For, in the first place, whatsoever expenditure is to such a degree necessary that government could not have place without it—operates, except in so far as effectually counter-operated, in the way of corruption.

52. In the next place, at the command of government, a means there is by which the

placing in the assembly of the representatives of the people, persons other than those chosen by himself: alleging, in justification, his right by law "to do as he pleases with his own."

2. Witness, in like manner, a *Marquis of Exeter;* who, if like report says true,[a] gives information to tenants of his, who themselves had even voted for both his candidates, that "unless they discharge *their* tenants who did not so vote, they shall, notwithstanding their own votes, be turned out of all the property they hold under" the family of which he is the head: to *widows*, moreover, that unless, by *marriage* or *otherwise*, they procure votes, they will share the same fate.

3. Behold here a *chain* of tyrannies: not content with being himself a tyrant, here stands a man, forcing others (query, in what numbers) to be participators in like guilt.

* Of this sort is the independence given to English judges; who are thereby rendered so many, as it were, natural enemies to justice, and partners in, and supporters of, that aristocratical tyranny, which, under "MATCHLESS CONSTITUTION," is the cause of all the political evil under which Englishmen are suffering.

[a] *Morning Chronicle*, 8th October 1830.

‡ Bitter is the fruit to the inhabitants of the parent territory, whatsoever it may be to the inhabitants of the soil into which population is transplanted. But when, by the hand of emancipation, the branch by which a layer was connected with the stock is cut, the layer having taken root, bitterness ceases, and sooner or later all that remains is sweetness.

matter of corruption may be divested of its poisonous qualities.

53. This means consists of the power of *dislocation*, if made exercisable *on* all public functionaries: immediately, or by the intervention of other hands, *by* the great body of the people in quality of possessors of the *constitution* authority, by which the members of the *legislature* are deputed and located.

54. In the case of the members of a *second chamber*, as such,— and in particular in the case of a chamber of peers, as such, — every portion of the matter of good possessed by them as such, operates in the way of *waste*, and in the way of *corruption*, both: and in the way of corruption immediately, because not capable of being counteracted by that power of dislocation, which, with reference to all other functionaries, is capable, as above, of being possessed and exercised by a first chamber.

55. Thus much as to counteractive remedies. Now as to preventive remedies:— against corruption — whether by means of evil, or by means of good, in the case of location by election, one remedy (need it be said?) there is, and but one: but *that* a certain one. This is, *secresy* of suffrage: which secresy may with certainty be maintained by the mode of delivering the suffrage, when effected in the way of *ballot*, as the phrase is: —*may* be maintained — and accordingly is so maintained, by all persons who are really desirous of maintaining it.

56. What, then, shall we say of him, and of the guilt of him who, seeing the efficacy of the *ballot*, in the prevention of this corruption — of this oppression — of this tyranny— shall use, and persist in using, his endeavours to prevent the use of this all-efficient and sub-efficient remedy against an evil, by which any form of government, the best in all other respects, is capable of being transformed into the worst.

57. In comparison of the guilt of him by whom any single act of this compulsive corruption is produced, — the guilt of him, by whom the practice of it throughout the whole field of election is advocated, will it not be as the number of men, if any, who by means of such his endeavour shall have been rendered compulsorily corrupt, will be to number *one?*

§ VII. *Delusion — its contribution to the Maleficence of a Second Chamber.*

1. Delusion has two sorts of instruments: the one consists of that portion of the matter of corruption, which is composed of the showy part of the matter of *good*: the other consists of *words*.

2. Of these instruments of corruption which are composed of the matter of *good*, — those which are instruments of *dignity*, are those, by which, in a conspicuous manner, indication is afforded — either of the *powers* of the functionary in question, or of the matter of *wealth* attached to his situation.

3. Of those attached to the situation of *monarch*, examples are the following: — I. The Crown. — II. The Habiliments. — III. The Throne. — IV. The Sceptre. — V. The Armorial Bearings.

4. Of these trappings, to make out a *correct* and *complete* list would be a work of no small difficulty and very small use.

5. To those which consist of words, the same observations may apply, with little variation: they must be picked up — these words — wherever they are to be found.

6. *Dignity*, *lustre*, *splendour*, *honour*, *glory*, and *influence:* these present themselves in the character of the principal ones.

7. *Dignity* is a sort of *ignus fatuus*, that requires *lustre* and *splendour* for the *support* of it. *Itself* it is a necessary support to the *throne:* but then, this same self requires supports; and these are *splendour* and *lustre*, or *lustre* and *splendour:* one or both, which you please. "This that you are writing (I think I hear you, my children, saying) is stark nonsense." Yes: so it is, indeed: but nonsense cannot be appropriately represented without nonsense.

8. Think how many hundreds — thousands — myriads — are every year, in England — not to speak of other countries — consigned to a lingering death: all of them by *taxes* imposed, and means of sustenance thereby snatched away — all for the support of the lustre and splendour of the throne, the crown, and its dignity.

9. The splendour and lustre that have *gaslights* for their efficient cause and support, and are employed in keeping accidents and offences excluded from streets — these are of real use: but with those the metaphorical splendour and lustre, which give support to the crown and dignity, form a perfect contrast: whatsoever effect they give birth to, when viewed in the point of view in which they are ordinarily viewed, is, instead of being of use, purely mischievous.

10. But these things, do they not give support to government? and if government is an *evil*, is it not a necessary one? — Give support to government! Oh yes: *that* they do: and there's the mischief of them. What we want is—that a *good* government *should* have support: and that a *bad* government should *not* have support — should fall to pieces for want of support. But what *these* things do is — giving support to *all* governments — to the *worst* as much as the *best*.

11. Apply this to the present case — to the chamber of peers: let the members of it conduct themselves in it ever so ill — oppose all measures beneficial to us all, as stre-

nuously and perseveringly as they will,— the same support will these extrinsic decorations afford to it.

12. Viewed in their true point of view— understood in their *literal* sense — these same words *lustre* and *splendour* may be *not* altogether useless:—they are not altogether uninstructive. Of *lustre* and *splendour* taken in *this* sense, what is the effect? to *dazzle* the eyes of beholders: to cause them to see the objects in question confusedly and falsely: in a word, to put these same beholders into, and keep them in, a state of *delusion*.

13. Ancient history tells of an "ancient sage philosopher," who took it into his head that he should, somehow or other, be the better off for being stark blind: and accordingly contrived to make himself so, by means of the *splendour* and *lustre* of a brass basin. Of this philosopher the philosophy will, without much difficulty, be pronounced "*false philosophy;*" and surely with as little difficulty may that *philosophy* be pronounced *false*, which prescribes the consigning human creatures by thousands to lingering death for the support of the lustre and splendour and dignity of *coronets*, not to speak of *crowns*.

14. So much for *dignity*, *lustre*, and *splendour;* or lustre, splendour, and dignity. Now for *honour* and *glory*.

As, on their part, *dignity*, *lustre*, and *splendour*, are, in our proverbial language, "*birds of a feather*," and as such, "flock together," — so on their part are *honour* and *glory*. These derive from their relation to *war* the chief part of their relative use: in them may be seen at once a seed and a fruit of it.

15. In *honour*, we in England possess four letters which, of themselves, will at any time afford a sufficient ground and justification for war: for war, with anybody or everybody. Such, at any rate, was the aphorism — pronounced once at least upon a time — oftener for aught I know — in our *honourable House*, by the then leader, and the now idol, of our Whigs. Of the state of things called *war* — which, being interpreted, is *homicide*, *depredation*, and *destruction* — human suffering produced in all manner of shapes upon the largest scale — of this so illustriously serviceable state of things, the efficient causes might, all but *one*, according to his principles, be suffered to remain without effects: not so, any the slightest wound received by *honour*.

16. Of this *rhetoric*, what is the correspondent *logic?* *Answer* — That whenever, and to whatever end of your own, and against whatsoever nation, you take a fancy to make *war*, — if, being a statesman, you condescend to *plead a justification* for it, you stand up, give the appropriate sound to the four letters *h*, *o*, *n*, and *r*, and your justification is made: always understood, that you must pronounce the word with a certain degree of *loudness*, and that, while you are pronouncing it, your cheeks must exhibit a certain degree of *intumescence*, and your eyes a certain degree of *fierceness*.

17. A justification made for war out of honour, is *cheaper* with *us* (you see) than with *you*. With us, *four* letters are (you see) sufficient: *you* cannot have one for less than *six:* witness *h*, *o*, *n*, *e*, *u*, *r*.

18. But, to *peers* and *peerages*, in what way is it (say you) that these words *honour* and *glory* have application? I answer—in this way:—*Gods* have their *attributes: kings* and *peers theirs*. *Kings* are "*Gods with us*"— their representatives and images upon earth. Peers are creatures of the crown — of the crowns of kings. Of *their* attributes I leave it to some future Blackstone to give a *complete* and *correct* list: all that, at this moment, I know about them is, that this of *honour*, or say *honourableness*, is one of them.

19. With us, the *Chamber*, or, as we say *House*, in which our self-constituted and self-styled representatives of the people are seated, is styled *Honourable:* the *House*, that is to say, in plain language, the *population* of it taken in the aggregate. This House is simply *Honourable*, while that of the *Lords* is in like manner styled *Right Honourable* and *Most Honourable;* — one or both — I can't at this moment tell which.

20. Within this same Right Honourable or Most Honourable House, are *degrees* of honour, rising one above another, in a scale; namely, — I. Baron and Baronies; II. Viscounts and Viscounties; III. Earls and Earldoms: these simply "*Noble;*" IV. Marquesses and Marquisates; V. Dukes and Dukedoms: these "*Most* Noble." All these Peers.

21. But, added to these is a purificative and conservative mixture of another sort of Lords: — Lords, who are *not* Peers, but something better and still more respectable than Peers; namely, — I. *Bishops*, *Right Reverend;* II. *Archbishops*, *Most Reverend*. These, to distinguish them from the sort of Lords who *are* Peers, are styled Lords *Spiritual;* to wit, in consideration of the *spirit* they are full of. *Spirit* meant originally *gas;* a kind of thing, one species of which is that which streets are lighted with: in *their* instance, it means a *sacred* sort. *Sacred* means the same as *holy:* so now you understand what they are. In contradistinction to them, the Lords who are Peers, and have for their contradistinction attributive the word TEMPORAL, cannot but, in conformity to the established nomenclature, be acknowledged to be *profane: sacred* and *holy* are synonymous to spiritual — *profane* to *temporal: sacred* and *profane* are to each other as black and white: *holy* men are, somehow or other, if you will believe them, "*in God;*" and, being so *in God*, they con-

trive, somehow or other, to be *Fathers;* which is more than *your* Bishops can do — in a *carnal* sense at least—or your Archbishops either.

22. "All this," I hear you saying, "may be very true; but what has it to do with *second chambers?*" My children, it has *this* to do: wherever there is either *honour* or *dignity*, there must be a *support* to it. Everybody says as much; nobody denies it. And this *support* must be made of *money*. And, for the extraction of the material, from the pockets of those by whose labour that which is given in exchange for it is produced, there must be a *pretence;* and the pretence is made by the manufacture of *official situations:* to which situations is attached money and money's worth, flowing in through the medium of *salaries*, *fees*, and *perquisites;* and to the situations are annexed *pensions of retreat*.

23. So, likewise, *pensions*, or *donations*, or *both*, for *widows* and *children*. For, as each peer has his *dignity* to support, so has his widow hers: so have his children theirs: every one of these same children, his or hers: of his male children, the eldest has more *dignity* than any of the others have: the others have every one of them the same. And, in each case, what would become of all this dignity, if it was not for the support given to it by the money? It would, of course, drop down. And were it to drop down, what would become of *government?* .... But the catastrophe is too terrible to bear thinking of.

24. True it is — that, in the Anglo-American United States, no such extravasated remuneration has place. Yet there, a something called government is to be seen, if you look close to it. And, somehow or other, it stands pon its legs, though it has no such *supports* to it. But, *that* government, being a democratical one, is not (so our monarchists are always ready to assure us) worth looking at.

25. And forget not, — that this jargon about the necessity of honour and dignity, and lustre, and splendour, for the support of government, — and of money, extracted by depredation, for the support of honour and dignity, and lustre, and splendour, — is *no joke*. It is uttered in most perfect gravity and seriousness, with exemplary solemnity, in messages from the king, and in speeches in both Houses. Uttered as and for, a competent government justification, of *taxation* to any amount. And, to the quantity of money for which there may, on this score, be an undeniable demand, no *limit* is ever professed to be set: to the quantity provided for the defence of the country, always: to the quantity provided for the support of the otherwise helpless and doomed to death, *always* is a determinate limit applied: for, in both these cases, is reference made to *need* in a specific to which application of the supply is to be made: for such a number of *mouths*, such a number of pounds of *money* — and so forth: to the quantity provided for *these supports*, always a limit set: to the quantity provided for the support of *dignity*, never: — never — no never can there be enough of it.

26. And now, my children! now (I hope) you are satisfied: satisfied, I mean, with *me*, your metaphorical father: for, if you are satisfied with the state of things thus faithfully represented, — if you (I say) are satisfied with it, it is more than I can be with *you*. But I will not think thus meanly of you.

27. Nor is this all. The *dignity*, with its *et cæteras*, thus placed upon its *support*, — it is in the situation in question, with relation to the *services* attached to it in the character of *duties*, received as a *substitute for*, under the name of a surely *presumptive efficient cause of*, appropriate *aptitude:* — yes, of appropriate aptitude, in all its several branches, *moral, intellectual*, and *active:* branches, three or four, as you please; appropriate intellectual aptitude requiring, on some occasions, to be considered as combining appropriate *knowledge* and appropriate *judgment*.

28. How, then, stands the truth of the case? Is it — that, the more there is of this *dignity*, with its *et cæteras*, the *more* there is of this same perfect aptitude? Oh no: but, contrariwise, the *less*. For, as to appropriate *moral* aptitude, this is the fruit of *self-denial*, itself an irksome sort of operation: as to appropriate intellectual aptitude, and active aptitude:—these are the fruits of hard labour — another irksome sort of operation: and the quantity of them is naturally in proportion to the quantity of *need;* and, the less the need a man has of any irksome sort of operation, the less does he employ of it.

29. Of this same *dignity*, the use is, the procuring for the possessor of it, respect, deference, compliance with such demands as it pleases him to make, — compliance with his wish and desire, in so far as it is known, or can be guessed at: and, of all *these* good things, by means of which are produceable and produced all *other* sorts of good things — the more a man can have, without either of the above-mentioned irksome operations, without which appropriate aptitude is not to be had, — the less of it will he have need of; and accordingly, the less of it will he give himself.

30. Accordingly, if you would see that relative *inaptitude* which is correspondent and opposite to official appropriate aptitude, — if you want to see that same relative inaptitude, — or in one word, *depravity*, in its several gradations, look to the *top* of the scale: there you may see *kings*. Exactly *as* their power and dignity, is their depravity: *so*, mathematically speaking, less and less, as they have less and less of those same attributes.

31. To come down to *Peers*. So it will be with Peers. True it is — *your* Peers, if you continue to have any, will not be so bad as *ours;* for they will not have so much — they will not have near so much — *power*, along with their *honour* and *dignity*. They will not have the nomination of the self-constituted and self-styled representatives of the people: they will not be in the habit of having *distant dependencies* obtained and retained, for the sake of official situations established in them, for the purpose, and with the effect, of being filled by peers, or elder or younger sons of peers, for the *profit* of *depredation*, and *pleasure* of *oppression*, to be exercised by those same living receptacles of honour and dignity. The consequences of any such burthen would, in your part of the world, be, for some time, too bad for endurance; and therefore it would not, till after a considerable length of time, be endeavoured to be fastened on you. But, when all this is taken off, there is surely enough left, to prevent you from consenting to be loaded with any such incumbrance as it would load you with.

32. To come home to your Chamber of Peers. — Part and parcel of the matter of corruption would be, every atom of honour, every atom of dignity,—meaning always, factitious honour and factitious dignity, manufactured as above, — every spark of lustre, and every spark of splendour, possessed by the chamber of peers, or by any member of it, as such. Let it be called *influence* — influence simply, or *legitimate* influence—would it — *now*, at any rate, — be the less clearly seen to be the corruption that it is? Would not the speaking of it, as necessary, or even contributory, to the support of good government, be, by all lovers of good government, regarded as an endeavour to produce illusion? — maleficent illusion? These questions will assuredly be seen to furnish their own answer.

33. Well then: could the present, or any other chamber of peers, have place among you, without factitious honour and dignity? could it, without factitious honour and dignity, manufactured out of the sort of materials just mentioned? By any man, by whom it were proposed to be established, would it be proposed, or wished to be established and preserved, clear of all such factitious appendages?

And here you have the last of these strings of questions, which furnish their own answers.

34. Read, in this view, the works of intelligent travellers published of late years: written without view to the present question. Read, in particular, the account given by *Dobell* of that vast sample of the human species — the population of China. Inquire of all intelligent men, who have had occasion to be acquainted with the different orders of men in Greece: always you will find at the top, depravity; at the bottom, excellence: and how cheering (is it not?) the thought, that it is in the *few* that depravity has her seat; in the many — the vast many — excellence.

35. So much for HONOUR, DIGNITY, GLORY, and their *et cæteras*. Now for *influence*. *Influence* is *corruption* under another name.

36. Of the terms *dyslogistic*, *eulogistic*, and *neutral*, the *import* has received explanation, and the *use* indication, elsewhere.* *Corruption* is *dyslogistic*: it gives expression to a sentiment of *disapprobation*, as being attributed to the idea of the *operation*, or the *effect*, designated by it. By the term *influence*, expression is given to the *idea*, without calling up, in conjunction with it, the *sentiment:* that sentiment, which, in so far as imbibed by the hearer or reader, would (it is apprehended) dispose him to endeavour to make alterations in the state of things under consideration.

37. Now, as to the employment given in the present case, to the word *influence*, in preference to, and, if possible, to the exclusion of, the word *corruption*. For the purpose of giving to the state of things, and to the institutions, on the continuance of which, his happiness is, in so great a degree, dependent, or is supposed by him so to be — a man will, of course, on all occasions that seem favourable, be doing whatsoever to him presents itself as contributing to that same purpose. Amongst other expedients, by giving expression to that sentiment of pleasure and approbation, with which the idea of it is accompanied in his own mind, and which it will be a gratification to him to communicate to other minds. But if, in speaking of the states of things and institutions in question, for the purpose of thus praising them, the word made use of by him on this occasion were the word *corruption*, it would not *answer* — it would thwart its purpose. The proposition, of which it makes part, would be a self-contradictory one: while endeavouring to *defend* the institutions in question, he would thus be passing *condemnation* on them.

38. Take for an example this aphorism — "The *influence* exercised by the crown is part and parcel of the constitution of the country." The influence of the crown, without limitation or exception, as to the persons on whom exercised —whether Lords — Commons — or, of the body of the people such individuals as are electors of the members of the House of Commons. Over and over again, and without reserve, has this been heard, and without contradiction heard, in the House of Lords, and in the House of Commons; and

* See the *Table of the Springs of Action*, and the *Book of Fallacies*.

to this word, *influence*, with as little reserve, has been prefixed the word *legitimate*. To the word *influence*, substitute now the word *corruption*. The legitimate corruption,—and say, employed by the crown—In either of those high places, has any such proposition, with this obnoxious word thus embodied in it, been ever heard? Assuredly not. To the *tower!* would be the cry, should any such heresy ever (which it is morally impossible it should) find utterance.

39. Alas! I have been forgetting all the while a sort of dignity, which (it will be said) cannot be truly styled *factitious;* forasmuch as, with indisputable truth, it may be styled *natural dignity*. This sort is—the *genealogical* sort:—the sort composed of the *genus et proavos, et quæ non fecimus ipsi:* composed of our relation to persons whom *we* did not *make*—of persons who *made us*. Well:—now that I have remembered it, all that I need say of it is—that whatever has been said of the *factitious*, such may, with equal truth, be said of this *natural* sort: and that, *natural* as it has *become*, let it have ever so long been so, it was, in the *origin* of it, *factitious*.

§ VIII. *Consequences of Supreme Judicial Authority in the same hands with the Legislative.*

1. The existence of a second chamber still supposed, shall its legislative authority receive into combination with it, in the same hands, any judicial authority?—judicial authority in any shape? No, say I, of course: whatsoever be the duration of the authority, whether lifeholding and hereditary, or simply lifeholding: or, as in the case of the Senate of the Anglo-American Congress, for a determinate length of years.

2. Well: but the judiciary authority, which is at present possessed and exercised by the House of Peers—if not lodged in a second chamber of the legislature, what (say you) would you do without it? and, if you cannot do without it, where would you place it?

To these questions answers shall not be wanting. But first must come a brief explanation, on the subject of the judicial authority, taken in the aggregate.

3. Of a judicial authority, what is the use and need? *Answer*—To give execution and effect to the will, real or imagined, of the legislature: *real*, in the case of really existing law; *imagined*, in the case of the fiction called *unwritten law*.

4. And (say you) in the case of real law, why cannot the possessor or possessors of the legislative authority give respectively execution and effect to their own will? *Answer*—For want of time: the addition of the quantity of time necessary for such an additional eventual operation not being compatible with the nature of things: except in here and there an extraordinary individual instance of a sort of case, of which presently.

5. Suppose no such subsidiary authority as the judicial in existence, the only course left to the legislature would be the confining itself to the issuing of individual commands, applying to subject-matters of all sorts—to persons, things, and occurrences—individually considered: acting thus with a degree of minuteness, exceeding even that which has place in military, or even in domestic life. But, even where the supreme legislative authority is in a single pair of hands, this (you see) is not possible: much less where it stands divided among a multitude of hands.

6. The consequence is—the necessity of its applying itself to subject-matters of all sorts *in groups;* and of having at its command *another* authority, the function of which shall consist in making, in case of contestation, application of the so-declared will of the legislator to the individual subject-matter, of which these groups are respectively composed.

7. Thus, in cases in which contestation has place, or is expected to have place. In cases where no contestation is expected,—as in the several departments, of which the several ministers or ministerial bodies, termed in England *boards*, are respectively at the head,—the power exercised by these immediate subordinates of the supreme legislative authority, is styled *administrative:* in the cases in which, as above, contestation has already place, or is expected to take place, it is styled *judicial*.

8. In this latter case, in each individual instance, two sorts of questions are liable to have place,—namely, 1. That which is called the question of *law;* that is to say—the question whether the import ascribed to the terms of the portions of law appealed to by him, by whom application is made to the judge, for the sort of service rendered by him, by exercise given to his appropriate power,—be that which *ought* to be considered as expressive of the *will* entertained by the legislature on that behalf. 2. That which is called the question of *fact*—that is to say, the question whether the individual state of things alleged by him as constitutive of his title to that same service, really, on the occasion in question, at the *time* and *place* in question, had existence.*

* Ministers of sub-departments proposed in the Constitutional Code, these:—1. Election Minister. 2. Legislation Minister. 3. Army Minister. 4. Navy Minister. 5. Preventive Service Minister. 6. Interior Communication Minister. 7. Indigent Relief Minister. 8. Education Minister. 9. Domain Minister. 10. Health Minister. 11. Foreign Relation Minister. 12. Trade Minister. 13. Finance Minister.

§ IX. *Duration of its Authority — a further Objection to a Second Chamber.*

1. After the objections from the before-mentioned sources, any additional objection from this one will (I should hope,) to *most* eyes, present itself as superfluous:—superfluous, the consideration — what duration had best be given to an authority which ought not to exist at all. Upon the whole, however, on this and other accounts together, a few short hints may, perhaps, be not altogether without their use. And if, in this case, of any use, they would be of still more use, as applied to the Senate, in the Congress of the Anglo-American United States.

2. In the case of the United States second chamber, the duration of authority (*term of service* is the phrase there) is *six* years — *three* times the duration of it in the first chamber. In your case, no duration do I find proposed, of any other length than that of each incumbent's life.

3. Evils in this case behold the following:

I. How unapt soever, in any or all respects, a man may prove, — he cannot be got rid of.

II. His continuance in authority being thus assured, proportionably increased is the quantity of the purchase-money which it may be deemed by the *Corruptor-General* worth his while to give for him.

III. For the purpose of receiving the thus maximized quantity of the matter of corruption, a man of commanding talents may make display of them on the popular side, in the original view of being bought; and, immediately on being located turn to the left about, and station himself on the corruption side, there to be kept, by the force of a benefit, in any shape, resumable at pleasure.

IV. The increase, which the love and possession of power give to the strength of the disposition to maleficence, has been already noticed. Maximized will thus be the *inclination*, in conjunction with the *power*, to apply the authority to all manner of bad purposes.

So much for *moral* aptitude.

4. If, by the advocates for duration of authority in a second chamber longer than what has place in the first chamber, any endeavour is employed to induce a reason for it, *experience* is a word—*benefit of experience* a phrase — employed in giving expression to it.

5. But, against this reason, up rise the answers following: —

I. If, upon the whole, the thus maximized duration of authority is preponderantly beneficial, why not give it to the *first chamber*, as well as to the *second?* Your declared opinion finds itself contradicted by your practice.

6. — II. Whatsoever be the net benefit from this source, it would be greater, if applied to the service of the *first chamber*, than if applied to that of the *second:* greater — in proportion to the superiority of the quantity of the effective power possessed by the first chamber, in comparison with that of the second.

7. — III. In the case of each individual member — if, by him — and, through him, by the public — service, net benefit in any shape has been derived from this source — in this event, supposing the duration the short one given to it in the case of the first chamber, the electors will, at each fresh election, have it at their option to give continuance to the trust, or put an end to it: thus will they have it in their power to give, to these supposed beneficent qualifications, whatsoever quantity appears to them to be of *good* use: whereas, in the case of the long duration, this same duration will this same *experience* have, how *bad* soever be the use made of it.

8. — IV. If the duration be *hereditary* as well as for life, as in the case of a chamber of peers, — the persons to whom the experience is given, in this case, will be those, in whose instance the nature of their situation is such, as to leave to them, as hath already been observed, the least quantity possible of inducement to acquire the appropriate experience in question, or to make a good use of it, if acquired; they having, without labour, such a mass of *power* as well as of the *matter of prosperity* in other shapes, as by persons not in that situation is not attainable, but by and in proportion to the quantity of labour actually bestowed.

9. — V. How to combine the minimum of expense with the minimum of the power of abusing it — is a problem, which presents a demand for solution in the case of a single chamber, as well as on any greater number of chambers. For this problem I have found what appears to me a solution, and it is already under the public eye.* The arrangement proposed by it is such as preserves the thread of a measure from being so frequently broken as it is in England under the present practice: and will otherwise be in France, in so far as the *initiative*, recently given to members of the chamber as well as to the king, is put to use.

So much for appropriate moral aptitude, appropriate intellectual aptitude, and appropriate active aptitude — altogether.

§ X. *For the Location of the Supreme Judicial Authority, sole proper mode, what.*

1. Well then, — for the exercise of the supreme judicial authority, the inaptitude of the chamber of peers, and of a second chamber in any other shape, being supposed demonstrated by the inaptitude of such chamber for existence, — what (it will naturally be asked of

* See Constitutional Code, Vol. I. Ch. 6, *Legislature*, § 24, *Continuation Committee.* [Note to original Edition.]

me) are the hands, which, for the exercise of that authority, you would recommend as the most proper ones?

2. I answer—General description of them, *this*—namely, those which—not being those of the supreme legislative authority—are those of an authority, as to the acts of which, assurance of their conformity to the will of the supreme legislative authority is most entire.

3. Particular description, this—namely, the hands those of a single judge—located by election in the way of ballot, in and by the chamber of deputies.

4. Next, as to *reasons*. As far as it goes, the reason, given in and by this general description, will (I hope) be satisfactory. It will not, however, be sufficient for the guidance of practice, without some arrangements of detail, respecting the proposed singleness of the judge, the powers requisite to be given to him, and the securities requisite to be provided against inaptitude in the character and conduct of this high functionary.

These arrangements, with their respective reasons, being given,—it will be the more clearly seen, that any other proposable mode of location is comparatively unapt, and *why* it is so.

5. Extraordinary cases excepted,—in which of necessity the supreme judicial authority must be exercised by the supreme legislature,—supreme judicatory let there be *one*, and *but* one; and *that* a single-seated one: judge, sitting in it, but one.

6. Against no alleged misdecision on his part, not charged to be *intentional*, let appeal be made.

7. Against alleged misdecision on his part, charged to be intentional and thence criminal, let there be appeal to the chamber of deputies.

8. Power to the chamber of deputies, to apply to the supreme judge, if deemed guilty of intentional misdecision, such punishment as it shall deem meet.

9. Power also to the chamber of deputies, to reverse, or in anyway vary, the decision of the judge:—but no otherwise than on condition of declaration made that he has been guilty of intentional misdecision, and punishment applied to him accordingly.

10. By appeal thus from the judge to the chamber, let not execution of the decision complained of be stayed.

11. But, in case of the judge's being so convicted and punished, let *satisfaction*, in the shape of *compensation*, for the wrong done by him, be made to all parties wronged: made, that is to say, at the charge of the criminal judge, to the extent of his means; and, to the extent of any deficiency in such means, let the compensation be made at the charge of the public.

12. Note—that the only sort of wrong for which, in the shape of *compensation*, adequate satisfaction is not capable of being made to a man, is—*that* which consists in the applying to him, or to some person specially dear to him, the punishment of death. In this one circumstance may be seen a reason—and that of itself a sufficient one—for abrogating altogether that mode of punishment: namely, in the event of its being found injurious, the irreparability of the injury done by the infliction of it.

13. In the case of the acquittal of a judge thus charged with intentional misdecision, power to the chamber of deputies—to apply, to the *accuser*, punishment, in whatsoever shape and quantity it shall deem meet: compensation included, for the wrong done to the wrongfully-accused judge.

14. No such accusation to be received by the chamber, unless the accuser has previously delivered himself up to the president of the chamber: unless, for want of forthcomingness on the part of such accuser, a motion for that purpose shall have been made by a member, and acceded to by the chamber.

15. The accuser having in this case been interrogated by the chamber—either the accusation will be dismissed, and the accuser, as above, punished,—or, if it be retained, the chamber will exact such *security* as it shall deem meet, for its continuance on his part to the end of the suit, and for his subjection to punishment, in the event of the acquittal of the judge.

16. So much for *arrangements:* now for *reasons.* With the supreme *legislative* authority, the supreme *judicial*, in one case at least, must be united in the same hands. Why? *Answer*—Because if it were not, the so-called *supreme* authority would, in fact, become the supreme legislative: issuing, on every occasion, decrees and irreversible mandates at pleasure: the legislative authority having, by the supposition, no means of giving execution and effect to its enactments: in a word,—if the supreme judicial authority were not *in this way* subject to the supreme legislative, the so-called supreme legislative would be subject to the supreme judicial.

17. From the supreme judicial authority, to the supreme legislative, appeal none; except on the ground of a criminal exercise of the power of the supreme judicial authority. Why? *Answer*—I. Because, if, without this restriction, appeal were made to the supreme legislative,—*this* authority would be the supreme *judicial* likewise: in which case, the *time*, which—except in the extraordinary and indispensable case in question, should be exclusively devoted to the infinitely more important business of legislation,—would, to an incalculable amount, be taken from that business, and given to the less important business of judicature.

18.—II. Because the business of judica-

ture would, in this case, be taken from the tribunal the *best* adapted to it, and given to a tribunal the *worst* adapted to it: namely, a multitudinously-seated one. To such a degree divided, responsibility to public opinion would be annihilated.*

19. In case of criminality, as above, the supreme judge is made thus punishable. Why? *Answer*—

I. If he were not, he might set up his own authority over the so-called legislative, and thus become *absolute*: the above-mentioned destructive mixture of the legislative and judicial authority in the same hands being in this case effected.

20.—II. Note, that—under such responsibility on the part of the judge, exercise made by him, of any act, likely to be deemed criminal by the legislature, and as such punished in the manner here proposed,—is likely to be extremely rare: so likely, that its never happening at all is perhaps more likely than its ever happening.

21.—III. This, however, supposes publicity of the proceedings carried on by and before this judge. For, supposing them secret, criminality in any shape, on the part of a judge, beholding no authority over him other than that of the legislature, may be regarded as an ordinary occurrence. So long as any of the matter of corruption were in existence,—inducement, likely to be adequate, could never be wanting.

22. The appellant to the supreme legislative authority against the supreme judicial is subjected to the eventual sufferings above mentioned. Why? *Answer*—

I. In case of wrong done to him, no other remedy can he have at all: consequently none upon terms less advantageous than these.

23.—II. No limits can be assigned to the sufferings he would stand exposed to by the correspondent wrongs, if he were without this remedy.

24.—III. If the punishment were not thus secure, and the means of securing forthcomingness on his part, for the purpose of his being eventually subjected to it thus effectual,—every suitor, who beheld advantage for himself in making appeal, would, as at present, make it: and, when the benefit of the delay would pay for the expense, the appeal would be made—even under a certainty of ill—ultimate success in other respects.

25. In case the supreme judge is adjudged guilty, as above, compensation is proposed to be made to any such persons as by such his guilt have become sufferers. Why? *Answer*—Because this is what (by the supposition) justice demands: and, without any additional delay or expense, proof will have been made of it, for the purpose of his punishment.

26. To the party injured, compensation is proposed to be made, at the expense of the criminal judge. Why? *Answer*—

I. Because, as far as it goes, the burthen of compensation has the effect of punishment: and, in truth, more than the effect of punishment produced by any other disposal that can be made of the sum in question.†

27.—II. Because a determinate fruit being thus indicated as derivable from prosecution,—the invitation held out to a party injured, and to all whom indignation at the thoughts of the injury has disposed to give him support, will be the more attractive.

28. To the magnitude of the punishment no limit is proposed to be set. Why? *Answer*,—Because, to the profit capable of being made, as above, by the crime, in the situation in question, no limit can be assigned: and, as often as the enjoyment reaped in all shapes together by a crime, is more than equivalent to the suffering produced by the prosecution and punishment of it, the so called punishment is a reward, by the amount of the difference.†

29. In default of sufficiency, in the pecuniary means of the judge, for the purpose of the compensation,—provision is proposed to be made for it at the charge of the public. Why? *Answer*—Because otherwise, adequate inducement to a party injured, to act his part towards the application of the remedy, might not have place.

30. So much for the arrangement proposed for a supreme judicatory, instead of the existing chamber of peers, or that of any other second chamber: and, moreover, for any other that is anywhere in use, or is capable of being proposed.

31. Now for the reasons why,—with the narrow and altogether indispensable exception above mentioned,—no apt supreme judicatory could have place, in the person or persons—either of the king alone, or of the chamber of deputies alone;—or of the king and the chamber of deputies sitting together;—or of the members of any tribunal, constituted by those two authorities acting to this purpose in conjunction.

32. To the king alone, this function not proposed to be allotted. Why? *Answer*—

I. Because, in that case, there would be, as above, absorption of a time which could not be spared from other business.

33.—II. The king would thus be exposed to ill-will, at the hands of those to whom his decisions were unfavourable,—and of all persons connected with them, by the ties of

* As to this matter, in the proposed Code, of which Vol. I. and part of Vol. II. is in print, see in Vol. III. when printed, Ch. 12, *Judiciary collectively*, § 5, *Number in a Judicatory*. [Note to original Edition.]

† See as to this, two works intituled ***Petition for Justice and Codification*** and ***Equity Dispatch Court proposed Bill.***

party, or personal sympathy, or impelled in that same direction by previous antipathy towards him, or those on his side. In a word, he would be unpopularized; and, otherwise than by a revolution, with its evils, certain and probable, a king, — howsoever unpopularized, and how deservedly soever unpopularized — cannot, unless driven out by terror, be changed.

34. — III. In the case even of a single suit, the subject-matter may be of any degree of *importance:* and the parties, in one way or other interested in it, may be in any degree *numerous.*

35. — IV. Take for instance a suit, whether criminal or civil, in which the *liberty of the press* is regarded as being at stake: or a criminal suit, in which the offence charged is an "offence *affecting the exercise of sovereign power,*"—rebellion.*

36. — V. The power of the chamber of deputies, and thence that of their constituents, would thus be reduced to nothing. It would have *two* powers superior to it. To the powers belonging to him as member of the supreme legislature — namely, the powers applying to *sorts* of cases, the king would add a *veto* applying to individual cases, as they came before him, in his quality of *judge.*

37.—VI. To the chamber of deputies alone, the power is not proposed to be given. Why? *Answer* — For the reasons that have just been given.

38. — VII. To the king and the chamber of deputies sitting in conjunction, the power is not proposed to be given. Why? *Answer,* — For the aggregate of the reasons applying to the two just-mentioned cases.

39. To a tribunal constituted by the king and the chamber of deputies acting for this purpose in conjunction, it is not proposed to give this power. Why? *Answer* —

I. Because the communication necessary could not have place, without an absorption of *time,* still greater than in any one of the above-mentioned cases.

II. Because, to a greater or less extent, the other evil effects just mentioned would be likely to have place.

40. — III. Because, of all *good effects,* shown to be likely to result from the herein-above proposed arrangements, there are not any, that would be likely to be produced, if at all, in so high a degree as by those same arrangements.

§ XI. *Consequences of Executive Authority in the same hands with the Supreme Legislative.*

1. Why mention this? Only that it may be seen — that no question which borders on the present one, in such sort as to be likely to be suggested by it, has been overlooked. For, to the present question it does not present itself to me as appertaining. Nothing of this sort do I see — possessed, or proposed to be possessed, by your house of peers.

What it *does* propose is, however, a real demand for *consideration:* and into consideration it has been taken by me in another place.†

2. In the constitution of the *Anglo-American United States,* this *combination* actually has place: namely, in the *second chamber* of legislation — the *Senate.* In that one body, — the *three* authorities — the supreme legislature — a large portion of the executive — and the supreme judicature — in part or in whole, are all mixed.

3. I have it in contemplation — to transmit to our friends in that quarter my suggestions on that subject, in company with this. To you they may perhaps answer, in some sort, the purpose of *elucidation.*

4. Remains yet another mode of combination. *Executive* authority with *judicial: legislative* out of the question. Neither in the work just alluded to has that been altogether out of consideration: nor yet, however, has the subject been entirely exhausted.

5. *Quodlibet cum quolibet* — apply everything to everything. In this maxim may be seen a supplement to *Bacon's* FIAT EXPERIMENTUM. Apply everything to everything: in this may be seen a receipt — for giving, to a stock of ideas, correctness as well as completeness. In chemistry, in particular, it is mainly by the application of it that such vast advances have been made by *you.*

But I am straying into the path of *garrulity*—a tempting and seducing path to old age. I correct myself, and stop.

§ XII. *Causes of the attachment to a Second Chamber — England — United States.*

1. Well, but (say you) the notion of the usefulness of a second chamber in *general* — is little less than universal — has it then no foundation in truth? I answer, No. In what then? (say you.) I answer, in mere prejudice — authority-begotten and blind custom-begotten prejudice. Certain countries there were, in which things were found to go on better than elsewhere: and in the government of these countries there was a second chamber.

2. Good. But was this second chamber the cause of their doing so? A question this, which nobody ever thought of putting to himself. *Efficient, uninfluencing,* and *obstructive* circumstances — these are so many packets of fibres, into which the texture of the body politic, in every part of it, must be dissected.

* In the Table of titles of chapters and sections of a proposed Penal Code, attached to Vol. I. of the proposed *Constitutional Code*—See Part II. *Offences severally considered.* [Note to original Edition.]

† *Constitutional Code.*

or no rational or effectual remedy can be applied to the disorders it is subjected to: and in comparison of the anatomy of the body natural, the anatomy of the body politic is still young. *Corruption*, you have just been seeing dissected: *constitution* lies now upon the table: a few touches of the scalpel must now be bestowed upon it.

3. Till, from the English form of government (or, as it is so improperly though generally called, *English constitution*) — till, from this *stock* a *layer* having been made, had been severed from the parent stock and taken root of itself (I mean, you see, the Anglo-American Union) — England was the most prosperous country in the known world: England was, of all the countries in the world, that, in which, in proportion to territory, the matter of wealth was most abundant, and the government in the smallest degree predatory and oppressive. This being the case, — in England the sovereign power had become lodged in a mixed body — composed of — a King, — a House of Representatives, in the choice of whom a more or less considerable portion of the people had some share, — and a House of Lords, the members of which were located in divers modes of location, agreeing in nothing but this — that neither the will of the subject many, nor consequently their interest as contradistinguished to that of the ruling few, had anything to do in the business.

4. Here, then, was the *effect:* now for what belongs to the *cause*. Look to the concomitant *circumstances*, as above, you will find, that it is not *by*, but in *spite of*, this same second chamber, that the prosperity was produced. *Efficient* muscular fibres in it you will find none; antagonizing and *obstructive* fibres in it may be seen in abundance. But away with these figures of speech: they are troublesome to manage; and have been worn to rags. Unhappily, there is no such thing as speaking — nor even as thinking — without such figures. Now to the point.

5. Directly or indirectly, — the rulers — of all the above denominations — had it in their power, severally or collectively, to reward, with good gifts, all such persons as should bring themselves, or be brought, to render to them, in any shape, acceptable service. Of all shapes in which service can clothe itself, laud is one of the cheapest to him by whom it is rendered: directly or indirectly, — as the matter of reward could be administered by them to trumpeters, so could the matter of punishment to gainsayers. For falsehood and misrepresentation, to the benefit of the ruling few, in how high a degree soever detrimental to the subject many, — *reward* there is — administered, or ready at all times to be administered, in abundance: of *punishment* not an atom: punishment being reserved for truth to the detriment of the ruling few, in how low a degree soever beneficial to the subject many.

6. Before the Revolution in 1688 (the short intervals that had place in the twelve years civil wars excepted,) the community was divided into two parties: on the one part, *depredator-general* and *oppressor-general:* on the other part, the plundered and oppressed: depredator-general and oppressor-general, the monarch: plundered and oppressed, all besides. Lords and Commons, and their *protegés*, being by this circumstance distinguished to their advantage from the rest, — namely, that there were amongst them those who, to the condition of plunder*ed* and oppress*ed*, added that of plunder*ers* and oppress*ors*: as towards and under the monarch, *sub-plunderers* and *sub-oppressors:* as towards one another, *co-plunderers* and *co-oppressors*.

7. Came the Revolution — the glorious Revolution — of 1688, and the parties were changed. On the one part, co-plunderers and co-oppressors, King, Lords, and Commons, and their *protegés*: co-plundered and co-oppressed, all besides.

8. Here, then, was the *Athanasian Creed* carnalized and realized. Here was *Trinity* in *Unity*. The King excellent, the Lords excellent, the Commons excellent: and yet there were not three excellents, but one excellent.

Any other points of unity it were needless to enumerate; these being — all of them — even these three thousand of men, summed up in this one of excellence.

9. One only must be brought separately into view: it being the one that belongs more particularly to the present purpose: it is that of *incomprehensibility*. The King was incomprehensible, the Lords were incomprehensible, the Commons were incomprehensible: and yet there were not three incomprehensibles, but one incomprehensible.

10. A property, which, under any form of government but the democratical, is by all rulers desired to be found and preserved, and consequently, where not found, to be created — is *blindness:* — that property, which, in French, when considered as *corporeal*, — as having its seat in the *body*, — is called *cécité;* when considered as *mental*, — as having its seat in the *mind*, — is called *aveuglement:* in English, the word *blindness* serves for both purposes.

11. By blindness, — by whatsoever bandage kept over the eyes — by this state of the eyes, coupled with laud from lips and from hand with pen in it, much reward was to be got; from vision — distinct relative vision — nothing better than punishment. Discrimination imports relative vision: therefore in the laud so bestowed, no discrimination was to be employed.

12. Mental blindness — *aveuglement* — not

being at this present writing *the order of the day*, the process of discrimination has here been ventured upon, — if without hope of reward, yet, although Lord Tenterden is at the head of the penal branch of the law, in the situation of Lord Chief Justice of the King's Bench, and Sir James Scarlett in that of Attorney-General, without much fear of punishment.

13. Prism in hand, I have ventured to decompose this carnal Trinity. Rational prosperity being the effect in question, *obstacle* (I say) to it is the authority of King, Lords, and Commons; but, most powerful of all, that of these same Lords: — not however so much in their own right, as in their quality of makers and masters of the Commons: *causes* of that same prosperity, the operations of all such members of the *public-opinion tribunal* as, from time to time, have shown themselves more or less disposed to substitute—to a form of government which has for its object and end in view the preservation of the faculty and practice of depredation and oppression for the benefit of rulers, at the charge of subjects, — a form of government, which has for its end in view the creation and preservation of equal *benefits*, and, for that purpose, equal *rights*, to rulers and subjects; saving only — to rulers, those peculiar *rights*, of which *powers* are made, and without which they cannot be *rulers*.

14. By the explanation thus given of this same doctrine of incomprehensibleness and the cause of it, I hope I have rendered *myself* in some tolerable degree well comprehended.

15. In the bringing about the Revolution of 1688, LOCKE, as every one knows, had no small share. In those days, after the shock produced by the conflict between absolutism and radical reform, such was the shattered state of the public mind, nothing better than moderate reform could be looked for by his discerning eye. The people had been blinded, and were led blindfold, in a string, woven in the Westminster Hall manufactory, by order from King, Lords, and Commons, by their copartners and servants of all-work — the judges.

16. What the *hatchet* is to the Russian peasant, *fiction* is to the English lawyer — an instrument of all-work. Locke had been a pupil of that versatile genius — politician and lawyer — the Earl of Shaftesbury, Lord Chancellor. Seeing how things stood, he borrowed of them that same instrument of theirs, went to work with it, and chopt out the *original compact*. So doing, he had their assistance and co-operation for his support: without it, they perhaps would not have been willing to lend him their assistance: pretty constantly, they would not have known how.

17. Of the *greatest-happiness principle*, discerning as in so superior a degree he was, Locke had no clear view: the eyes of his mind had not, with any sufficient degree of steadiness, directed themselves to this quarter.

18. Witness his position — (call it axiom — call it definition — call it at any rate *exposition*) — out of which he thought might be made the foundation-stone of law — namely, "Where there is no *property* there is no injustice:" as if the effects of human conduct upon human happiness, and thence the direction most proper to be endeavoured to be given to it by human rulers, could be pointed out, by statements merely declaratory of the relation of the import of one word or phrase to that of another.

19. This same *original compact* — the compact between king and people — was a fabulous one * — the *supervening* compact — the compact of 1688 — the compact between King, Lords, and Commons, was but too real a one.

20. Bringing into *hotch-pot* (so says the old law French word) — *pic-nic fashion* (so says the modern English word)—our respective shares of power, — quoth each to the others, We will make a feast for ourselves — an all-the-year-round Lord Mayor's feast: at the expense of mob, alias rabble, alias populace, alias lower orders, by whose labours the materials of it will be, as they have been, produced.

21. For the music of the feast, — *chorus*, set by Blackstone: his substitute to *Hallelujah*, his *Esto Perpetua! Finale*, by his fellow-worshipper of Church and King — Lord Eldon — *one cheer more!*

22. So much for *Glorious Revolution:* and the authority-begotten prejudice planted by it, for the support of a Second Chamber — in France, a House of Peers; in England, a House of Lords. Exit *Misrevolution;* as we say, *misfortune* — *misdecision;* alias *misled revolution*, as per Dean Swift, when he sung — The longitude miss'd on, By wicked Will Whiston: alias *Miss*, or, as *you* say, *Mademoiselle* Revolution, christened by her godfathers and godmothers, *Gloriosa:* namesake to Donna Maria da Gloria.

23. Enter now *American Emancipation.* From 1688 to 1773, or thereabouts, the occupation of plunderage and oppression went on everywhere. In both continents, — in the American, as well as in the European, — men continued to see themselves skinned, being (like the cook's eel's) *used* to it. But, in the American, men were not quite so much used to it as in the European.

24. In matters of detail, — a form they

* See displayed, in the *Fragment on Government*, the inaptitude of the *original compact* as a substitute to the greatest-happiness principle — at that time, in compliance with custom, denominated the *principle of utility*, from *David Hume* and *Helvetius.*

were still more used to, — was a much better form, — a form, in the making of which the disdainful negligence of their rulers in the mother-country had suffered them to have a hand.

25. When, on the occasion of the rupture, they had a form of government to settle, — they saw considerable ground for thinking well of a second chamber, though it was composed of a hereditary and haughty aristocracy, and no determinable ground for thinking ill of it. In whatsoever they were suffering, or had at any time suffered, the king's was the hand that had been most visible, not to say alone visible. With him had everything, and consequently everything bad, originated: with the House of Lords, nothing. Still was the government from which their ancestors had taken refuge in their wilderness, less bad than any which they had been accustomed to see elsewhere: and it was to a House of Lords, without a House of Commons (?) that England, as they saw, stood indebted for the features by which her form of government stood thus advantageously distinguished: for it was to a House of Lords, and without a House of Commons, that she stood indebted for *Magna Charta*: it was to Simon de Montfort — a member of the House of Lords, that she stood indebted for the House of Commons itself. The House of Lords they saw approved by Blackstone. The House of Lords they saw admired by Blackstone: and, for constitutional legislation, they had in view no better approved guidance than that which was afforded them by the anility and servility of that English lawyer.

26. In the remedies they employed, no great comprehensiveness, in their situation, seems discernible. Greater was not to be expected. In the order indicated by the severity of the smart, the thorns they suffered by were plucked out, as was natural, one after another. Neither to their sense, nor to their imagination, had the second chamber presented itself, as the source of any of their sufferings: to exempt themselves from all such uneasiness, they had but to constitute themselves creators of the *quasi-Lords*, of which the population of their several *second chambers* was composed.

27. No wonder that, without troubling themselves to inquire into the particular use of it, they should continue on foot every institution from which they felt not any particular annoyance. The form of government, the *capital* part of which they had shaken off — this form of government, with all its defects, was still less bad than any other that had ever presented itself to their view. Of their *place-men*, those who had, from time to time, been sent to help to govern them from the mother-country, had, of course, been at all times loud in their *laud* of it. Their *lawyers* were the issue in tail, male and female, of the lawyers of the mother-country — hereditary possessors of their sinister interest, and interest-begotten prejudice. The people's at once blind and treacherous guides, saw sufficient reason to be pleased with whatsoever, in a more particular manner, regarded themselves, — and thence with the whole matter of it in a lump, after the particular parts, from which they had been sufferers, had been got rid of.

28. Under these circumstances, no wonder — that, the particular exceptions always excepted, one proposition was — generally, not to say universally regarded as an *axiom*, — *Whatever is, is right*; or, in Blackstone's language, — *Everything is as it should be*. This in English: of which the French version is — in the language of the *financier* of the *ancien regime* — the question, "*Pourquoi innover? Est-ce que nous ne sommes pas bien?*" — a question, which contained in it its own answer, — an answer, the truth of which was altogether beyond dispute.

§ XIII. *Conclusion — Let not Democracy be a Bugbear.*

1. Fellow-citizens! *Anarchy* is one bugbear; *Democracy*, another. Separately, or like dogs coupled, they are sent forth by periodicals — ministerial and absolutist — to strike terror into weak minds, on both sides of the water — yours and ours: to frighten men out of their wits, and prevent them from forming any sound judgment on the all-important subjects which you have been seeing handled.

2. "Democracy has anarchy for its certain consequence;" or — "Wherever democracy has place, anarchy has place;" or — "*Democracy* and *anarchy* are synonymous terms:" a specimen this of the *twaddle*, that may be seen employed for this purpose. *Twaddle* has not long been in our colloquial language: it will not be found in any of your dictionaries of it: *anility* may perhaps serve to express in both languages the idea it calls up.

3. Unhappily — foreign as it is to reason — hostile as it is to reason — it is not the less effective. *Fear* is a *passion*, by which judgment is laid prostrate and carried away captive.

4. Such being the power of this same bugbear, — a few words of exorcism to drive away, from as many of their seats as possible, all such unclean spirits, may perhaps be not altogether without their use.

5. Before any such connexion between democracy and anarchy can have been really believed by a man to have place, he must have been already blind, — or by a bandage of effectual tightness have prepared himself for the not seeing it: he must have been already deaf, or by an effectual obturative

prepared himself for the not hearing it. In him may be seen a patient, labouring under a sort of *monomania*. Suppose, then, some charitable practitioner disposed to attempt relief, how should he go about it? In some such way, perhaps, as this. Two words — *Democracy* and *Anarchy* — produced the disease: one other word — *America* — may take the lead in the cure. Applying, then, to one of the ears of the patient a *hearing* trumpet, suppose his Æsculapius to take in hand a *speaking* trumpet, and speak thus: — "*America*, sir! — did you ever hear of such a quarter of the globe as America? — did you ever see it laid down in a map?" If yes, "did you ever hear of a part of it styled the territory of the *United States?* — did you ever see it marked down in that same map?" If yes, "did you ever hear of there being six-and-twenty of them, more or less?" If yes, "did you ever hear of their having, each of them, a *constitution;* and all of them together, an all-comprehensive one, regulating the affairs common to them all: to each of these constitutions expression being given in a determinate assemblage of words, printed and published for the information of all?" If yes, "did you ever hear said of any one of them, that the enactments of which it is composed experience less punctual obedience than do the laws of any other government that can be mentioned?" If not, "is that state of things *anarchy?* — is it compatible with the existence of *anarchy?* — of anarchy, throughout the whole of one and the same territory?"

6. This same word *anarchy* — has it in your mind, sir, any intelligible meaning, other than the non-possession of security for those good things, on the possession whereof life, and all that is worth having in it, depends: — security as to person — security for property, power, reputation, and condition in life? For which of these possessions, then, is security less certain *there* than under any government under which it is most? [meaning always in those parts of the respective territories, in which the population is dense enough to admit of such security.]

7. *Anarchy* indeed! If by *anarchy* is meant the want of security in all or in any one of those shapes, — have you any curiosity to see an instance of a country in which it has place? If yes, what think you of England? Do you want to see a word or a phrase synonymous to *anarchy?* What say you to *matchless constitution?* Matchless constitution! what is it but a mere fiction? Can you, sir, find anywhere any determinate form of words in and by which it stands expressed? *Anarchy?* have you any wish to see a definition, or a true description of it? What think you of this? Anarchy is a state of things, in which, over the greatest part of the field of law — over all that part that is governed by what is called common law, in contradistinction to statute law — the existence of law is a mere fiction: in which, what there is of real law is, to all men but a few, *unknowable:* so much so, as to be incapable of serving them as a guide for their conduct: and in which what is called *justice* is — to all but a few (and those too plundered by it) inaccessible? in which, according to the confession of appropriately learned and officially commissioned men, there is not in the whole territory a foot of land, the title to which is secure.

8. Well then, my fellow-citizens of France! Well then, my fellow-citizens of England! My fellow-citizens of the civilized world! My fellow-citizens of future ages! If *democracy*, instead of being the same thing with *anarchy*, is really a better form of government than any which is *not* democracy — better than an absolute monarchy, an absolute aristocracy, or an aristocracy-ridden monarchy, — what reason is there, why I should not hold the difference up to view? If no use can be found for a house of peers, why should I not say so? If no use can be found for any second chamber, or any sovereign governing body, other than a set of men chosen and commissioned by the people at large — why should I not say so? If no use can be found for any such functionary as a.... as a.... king — (there — the word is written, and the world is not yet come to an end) — why should I not say so? If king and second chamber are — both of them — worse than useless — why should I not say so? If there be any use in them, or either of them, let him who thinks there is, and says there is, show it.

9. When I set pen to paper, I did not look to say all this: — I did not look to go so far: but, as the consideration and the argument proceeded, I found myself led on......and on ....till I came at last to this point. In saying what I have said — have I said anything that is not true? Let it be shown that it is not — and I myself will confess that it is not. Have I said anything that is mischievous, or likely to become mischievous? Let it be shown in what precise way it is likely to be mischievous: — by whom and how it is likely to be made so. Let it be shown — how, of anything that is true on the subject of government, the knowledge can be mischievous.

10. Let this be shown — and I will take a lesson from Fenelon; in the face of the public, pass condemnation on what I have been writing, and recommend it to the flames.

Fellow-citizens of France!

11. At this present writing, we in England are sharers in *one* part of your good fortune. The king we have in England is really what his father was said to be — *the best of kings:*

— the best of the kings we ever had, or are likely ever to have: such at least is, in all sincerity, my notion of him. How cheering it is to me to be able to say so! All blessings be on his head! Such is my acknowledgment. But, by this momentary piece of good fortune, how can my notion of kingship, *in general*, be a whit altered?

12. As to the quantity of suffering which it would take to pass from monarchy to democracy, this is what I am not competent to appreciate. It will depend upon the circumstances of the several states.

13. Note well — it is for myself alone that I am thus speaking. If I am a criminal, I have no accomplice. If I shall be found to have been doing good, it being done thus openly, it will not have been, as the poet phrases it, "done by stealth;" nor will there be any call for "blushes:" for I shall not "find it fame."

With my never-departed-from simplicity and sincerity, — I have at length said my say: — and so — for this time — fellow-citizens, of all places and all times — farewell!

PAPERS

RELATIVE TO

CODIFICATION AND PUBLIC INSTRUCTION:

INCLUDING

CORRESPONDENCE WITH THE RUSSIAN EMPEROR,

AND

DIVERS CONSTITUTED AUTHORITIES

IN

THE AMERICAN UNITED STATES.

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1817.

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PART I.—ON CODIFICATION.

PART II.—ON PUBLIC INSTRUCTION.

*** Several of the Papers, of which the present volume consists, were printed under the title of "Supplement to Papers relative to Codification and Public Instruction, including Correspondence with the Russian Emperor, and divers constituted authorities in the American United States. Published by Jeremy Bentham, London; printed by J. M'Creery, Black-horse Court; and sold by Payne and Foss, Pall-Mall, and R. Hunter, successor to Mr. Johnson, St. Paul's Church-yard. 1817." With reference to the present arrangement, the Papers printed in the original collection were—Nos. I. II. III. V. VI. VII. X. and XI. of Part I. and the whole of Part II. Those in the Supplement were Nos. IV. VIII. IX. XII. XIII. and XIV. of Part I. The present more uniform arrangement will be justified by the following note, accompanying the table of contents of the "Supplement," which shows that the separation of the Papers was in a great measure owing to accident:—"Of the above Papers, Nos. I. II. III. and IV." [corresponding with IV. XII. XIII. and XIV. of the present Edition,] "the brouillons, though they had been all the time within the Author's reach, and the packet, in which they were contained, continually under his eye, had, owing to a weakness in his sight, been overlooked, and were not found till after the preceding papers had been dispatched for America. Thence it is, they remain to form so many numbers in this Supplement."

PAPERS

RELATIVE TO

CODIFICATION AND PUBLIC INSTRUCTION.

PART I.—ON CODIFICATION.

No. I.

To the President of the United States of America.

Queen-Square Place, Westminster, October 1811.

SIR,— The offer, which it is the ambition of this address to submit to the consideration of the President of the United States, is addressed (you will see immediately) not to the person, but to the office. By an explanation thus early made, some reading will be saved to you. The respect, of which the offer itself is its own best testimonial, needs not, I presume, any more words for the expression of it.

To come to the point at once — Give me, Sir, the necessary encouragement, — I mean, a Letter importing *approbation* of this my humble proposal; and, as far as depends upon yourself, *acceptance*, I will forthwith set about drawing up, for the use of *the United States*, or such of them, if any, as may see reason to give their acceptance to it, *a complete body* of proposed law, in the form of Statute law: say, in one word, a *Pannomion*, — a body of statute law, including a succedaneum to that mass of foreign law, the yoke of which, in the *wordless*, as well as boundless, and shapeless shape of *common*, alias *unwritten* law, remains still about your necks: — a *complete* body, or such parts of it as the life and health of a man, whose age wants little of four and sixty, may allow of.

This letter, Sir, — I mean the letter above stipulated for, — when once I have it in hand, I have my *reward*. I have my *employment:* and the honour inseparable from the employment is the only retribution, that *can* be *accepted* for the labour of it.

I say "*accepted,*" Sir,—not *required* or *expected*, but *accepted:* for from this word corollaries will be deduced, the utility of which, with reference to the proposed service, will, I flatter myself, when brought to view, as they will be presently, not appear exposed to doubt.

The *plan* of the proposed work, — and therein the supposed *advantageous results*, the prospect of which forms what the proposal has to depend upon for its acceptance, — the circumstances of *advantage* attached to the nature of the *terms* on which the work would be executed, — the declared *objections* which it ought to be prepared for, together with the *answers* which those objections seem to admit of, — the latent, but not the less powerful, *obstacles* which it may have to contend with, the *advances* already made towards the execution of it, — on all these several topics, some sort of explanation may naturally be looked for: — on all of them, something in the way of explanation shall accordingly be attempted; attempted, though in that state of extreme, and proportionably disadvantageous compression, without which no reasonable hope could be entertained of that promptitude of return in the way of answer, which may be requisite to success.

Before I come to particulars respecting the proposed *plan*, with its supposed *advantages*, it will be necessary for me to make reference, once for all, to a view of it which is already in print. I mean the work in 3 vols. 8vo., which, under the title of *Traités de Legislation, Civile et Penale . . . . par M. Jeremie Bentham, &c.* was, in the year 1802, published at Paris, by my Genevan friend, M. Dumont.

One copy of it was, upon its publication, sent (I understand) by the Editor, to his countryman Mr. *Gallatin*, Secretary of the Treasury to the United States: whethe., in your part of America, any other copies of it have ever been in existence, it has not fallen in my way to know.

Far as those papers were from being considered by the author as having attained a state approaching to that of a finished work, yet of the plan which, on any such occasion as that in question, was then, and still would be, proposed to be pursued, a conception, sufficient for the purpose here in question, may, if I do not deceive myself, be obtained from them. Of the *details*, even of the proposed *text*, they exhibit samples more than one, nor those of small account. So much of the plan being already *there*, it might seem that nothing in explanation of it could be necessary in this place. But, without some preconceptions, how slight and general soever, of some of its most striking peculiarities, what it will immediately be necessary to say of it in the gross might scarcely be found intelligible.

§ I. *Nature and supposed Advantages of the proposed* Form.

In a plan framed for any such purpose as that in question, *matter* and *form* — to one or other of these two heads, whatsoever features, whether of excellence or imperfection, may be distinguishable, will, it is believed, be found referable.

1. As to *matter*, in the character of a *test* of, and *security* for, the fitness of the work in this respect — of one constituent portion pervading the whole mass of the *rationale* (if so it may be termed,) such will, at first glance, be seen to be the efficiency, that of this appendage, a brief intimation, however slight, may, for the present purpose, be perhaps of itself sufficient.

By the *rationale* I mean (for a sample see *Traités*, &c. as above,) a mass of *reasons*, accompanying, in the shape of *a perpetual commentary*, the whole mass of imperative or regulative matter, — the only sort of matter, to which any body of law as yet extant has ever yet been found to give admission.

Not a single point of any importance will, in any part, be settled, but that, in the *rationale*, the considerations by which the provision made in relation to it was determined, will be to be found: and, by the connexion, which, through the medium of *the all-governing principle*, viz. *the principle of utility*, these *reasons* have with one another, and by the repeated application made of the *same* reason to different parts of the text, the quantity of space occupied by matter of this description will be found to have been rendered much less than could readily have been imagined.

This *appendage*, or *component part*, — call it which you please, — this *perpetual commentary* of *reasons*, is what I will venture to propose as a *test;* as a test, and the only test, by which, either of the *absolute* fitness or unfitness of any one proposed body of laws taken by itself, or of the *comparative* fitness of each one of any number of bodies of law, standing in competition with each other, and proposed as capable of serving for the same division in the field of legislation, any satisfactory *indication* can be afforded: — a test, to which, by a predetermined and pre-announced resolution, every such composition ought accordingly to be subjected.

Without this appendage, to draw up laws is of all literary tasks the easiest: *power* and *will*, wherever it happens to them to meet, suffice for it; of *intellect* there is no need. — On the other hand, if, *with* this addition, the task is of all tasks the most difficult, it is at the same time *that*, in the execution of which, whatsoever trouble may be found necessary to the surmounting it, will find itself most worthily and richly paid for, by real and important use.

2. As to *form* — here again, by one word — *cognoscibility*, every sort and degree of excellence, which, under *this* head, can be given to a body of law, will be found expressible. On the fact of its being *present* to the mind of him on whose part, to the effect indicated, *action* or *forbearance* is, on each occasion, called for, *present*, — that is to say, in the degree of *correctness* and *completeness* necessary to the accomplishment of the legislator's purposes, — depends, on each occasion, whatsoever good effect the law can be, or can have been designed to be, productive of. But, on the *form* thus given to the *matter*, will depend the degree of excellence, in which the property of *cognoscibility*, as thus explained, has been given to it: on the *form*, therefore, will, in a proportionable degree, depend the practical good effect of whatsoever degree of excellence may have been given to the matter of the law.

Taking *cognoscibility*, then, for the *end*, the following may serve as a sample of the *means*, — of the *securities* which, in the plan in question, have been devised and provided for the attainment of that end.

I. Division of the whole *Pannomion* into two separate parts, — the *General Code*, and the system of *Particular Codes*.

In the general code are comprised all such matters, of which it concerns *persons in general* to be apprised: — in the system of particular codes, each particular code contains such matters only, with which some *one* class or denomination of persons only have concern: — some *one* class or denomination, or in case of correlative classes of persons running together in pairs (such as *husband* and *wife*, *master* and *servant*, and so forth,) some *two* or other such small *number* of classes or denominations, whose legal concerns are thus inseparably interwoven.

Merely for illustration's sake: number of particular codes as above, say 200; average length of each, 5 pages. Consequent advantage: burthen of legal matter to be borne in mind by each person reduced from 1000 pages to 5 pages. Such, in respect of *cognoscibility*, is the advantage which this single arrangement suffices to produce. To more such classes, it is true, than one, will one and the same individual person be commonly found aggregated: — I mean, of those classes which, as above, would have each of them its separate *code*. From the sort of saving in question, a correspondent deduction would accordingly be to be made: but, for illustration, thus much, without going any further into calculation, may, it is supposed, suffice.

From *general code to particular codes*, and *vice versâ*, frequent references will of course be necessary: nor in the working up of the one can the texture of the other, consistently with clearness and mutual consistency, pass

unheeded. But all this in matter of detail, for which no room can be found here.

II. In each code, as well *particular* as *general*, an ulterior distinction, noted and acted upon, is the distinction between matter of *constant* concernment, and matter of *occasional* concernment. To produce the effect aimed at in the making of a law,—to produce the effect of *guidance*,— that which is matter of *constant* concernment must, in all its magnitude, in all its detail, be borne in mind at all times: while, in the case of that which is but matter of *occasional* concernment, the bare *knowledge* or *suspicion* of its existence will in general be sufficient; matters being so circumstanced, that, before the time for action comes, sufficient time for *reference* to the text of the law, and for perusal of its contents, may, on all occasions, be found.

III. In each code in which it is found requisite,—and in particular in the *penal* branch of the *general* code, in which it will *throughout* be found requisite,— another distinction and division made, is that between *main text*, and *expository matter* or *exposition*.

The *expository* matter consists of explanations, given of, or on the occasion of, this or that particular word in the *main text*. In the *main text*, each word so explained is distinguished by a particular type, accompanied by a *letter* or *figure* of reference, referring to that part of the expository matter in and by which it is explained; by which means the fact of its having thus received explanation, is rendered manifest to every eye.

In the course of the *Pannomion*, should this or that same word be employed in every so many hundred *places*, one and the same explanation serves for all of them: care having all along been taken to apply the explanation to every such passage, to the end that it may be found conformable to the sense intended, in each such passage, to be conveyed.

So moderate will the number of these *essential* terms— these *expounded* words— be found, that the labour necessary to the giving correctness and consistency to the part of the language, the import of which is thus fixed, — fixed by authority of law,— needs the less be grudged.

IV. To the *penal* code belongs an ulterior distinction peculiar to itself: — matter descriptive of the offence in its *ordinary* state, and matter indicative of the several causes of *justification*,* *aggravation*,† and *extenuation*,‡ with the grounds of *exemption* ‖ from punishment which apply to it.

From beginning to end, one object kept in view and aimed at is—that, the whole field of legislation being surveyed, — surveyed and travelled through, over and over again, in all directions, — no case that can present itself shall find itself unnoticed or unprovided for. Of this object the complete attainment may, perhaps, be too much for human weakness: but, by every approach made towards it, the science is advanced; and, in all shapes, the security of the people against suffering,— sudden and unlooked-for suffering, — is increased.

V. *Promulgation-paper*: — for formularies of all sorts,— *conveyances* and *agreements*, as well as instruments of judicial *procedure*,— *paper*, of a particular *size* and *form*, and *appearance* in other respects, provided; with a *margin* of letter-press, in and by which, in the instance of each such species of instrument, intimation is given of the whole text of the law, relative to the species of transaction therein in question: intimation,— viz. according to the quantity of room occupied by it, given, either *in terminis*, or in the way of *abstract*, with indication of, and with reference to, any such portion as is found to occupy too much room to be given *in terminis*.

In particular, to the whole business of *conveyances* and *agreements* would thus be given a degree of simplicity, certainty, and security, of which, even after the many improvements which, I am certain, must have been made in all the United States, upon the original chaos, no adequate conception would, I believe, be readily formed, antecedently to experience.

In and by this method, one useful result is looked for, and I hope provided for; viz. that to such persons, by whom, in respect of its *matter*, the work may, in this or that part of its extent, be disapproved, yet, in respect of its *form*, it may still be found of use. Seeing the *reasons*, in which the proposed provision has found its support and final cause, each such disapprover will thereby have before him such a view as, I hope, will not be an indistinct one, of the force with which, in the shape of reason and argument, he has to contend. On the one side, he may, in this case, see cause to say, " This or that reason seems defective, and taken all together, the whole mass of reasons appear insufficient and inconclusive:" or, on the other side, " The nature of the case affords such or such a reason, no mention of which is, in this work, to be found." — Thus it is, that, even where the reasoning may appear erroneous or inconclusive, and the proposed provision improper or inadequate, — even in these places, if the matter be stated with that *clearness*, which it has been the object of the workman to give to everything that ever came from his pen, and which, on the occasion in question, would, in a more

* Examples— *Consent*, *self-defence*, lawful exercise of *public power*, lawful exercise of *domestic power*, &c.

† *Premeditation*, *confederacy*, &c.

‡ *Unintentionality*, *provocation* (contemporaneous or recent) &c.

§ *Insanity*, *Infancy*, &c.

particular manner, be the object of his endeavour and his hope, — even his *errors* may, by serving or helping to bring to view the opposite truths, be found not altogether devoid of use.

In this way it is, that, both in point of *matter* and in point of *form*, his endeavour would be to give to the work such a character and complexion, as shall be found correspondent to the progress made, in these our times, in every other line of useful science: to the end that, neither in the whole nor in any part, — in matters of law any more than in matters dependent on mechanical or chemical science, — shall the lot of the inhabitants of your part of the globe, be, in future, determined by the unexperienced and ill-considered imaginations of primæval barbarism.

As matters of law stand at present, in *your* country, Sir (not to speak of *ours*,) on what sort of basis is it that every man's dearest and most important interests stand, or rather fluctuate? On some random decision, or string of frequently contradictory decisions, pronounced in this or that barbarous age, almost always without any intelligible *reason*, under the impulse of some private and sinister interest, perceptible or not perceptible, without thought or possibility of thought, of any such circumstances or exigencies, as those of the people by whom the country here in question is inhabited at the present time: pronounced by men, who, if disposition and inclination depend in any degree on private interest, were as far from being *willing*, as from being, in respect of *intelligence*, *able*, to render their decisions conformable to the interests, even of the people, by whose disputes those decisions were called for, and whose situation alone it was possible that, in the framing of those decisions, they should have in view: — even of the people of those several *past* ages, — not to speak of those of the present age, or of ages yet to come.

Since the year in which the work edited by Mr. Dumont, was published in French, at Paris, — viz. the year 1802, — that same language has given birth to two *authoritative codes* — the one already a *Pannomion*, or at least designed to become such, published by authority of the *French Emperor;* the other, confined as yet to the *penal* branch, published by authority of the *King of Bavaria*. In both instances, the compositors have done me the honour to take into consideration and make mention of that work of mine. On the proposed occasion in question, I should not fail to make correspondent return, and make my best profit of *their* labours.

The examination of them is what I have as yet postponed, waiting for some particular occasion, by which such examination might be applied to some particular use. But to warrant a man in pronouncing, and with confidence, that, in and by each of those works, a prodigious benefit has been conferred on their subjects by their respective sovereigns, it is not necessary to have read so much as a single page. Executed as well as the nature of men and things admits of its being executed, no other literary work can vie with it in usefulness: — executed in the very *worst* manner in which, in the present state of society, it is at all likely to be executed, it can scarcely, when compared with the chaos to which it comes to be substituted, fail to be productive of clear profit in the account of use.

Of some of the *leading features*, by which the work *here* proposed would be distinguished from both *those*, — a work composed for the use of men who are in use not only to think, but to speak and print what they think, from works composed for the use of men who scarcely dare speak what they think, and to whom it has been rendered impracticable to print what they think — a slight sketch, Sir, has just been laid before you.

I. For securing the aptitude of it in point of *matter*, — in the *proposed English* work, the *rationale* above described: in neither of *those French* works, any security at all, in this shape or any other.

II. For securing the aptitude of the work in point of *form*, — for securing to it the maximum of *cognoscibility* — and thereby the advantage of producing, to the greatest extent possible, in respect of number of *observances* compared with number of *non-observances*, whatever effect it purposes to itself to produce, in the proposed English work — 1. Division into General Code and system of particular codes. 2. Division of the tenor of the law throughout into *Main text* and *Expository matter*. 3. In the Penal Code (not to insist on any such division as the usual and already familiar one,) into *general titles* (titles of general application) and *particular titles*, (each applying exclusively to a particular species or tribe of offences.) 4. Division of *Main text* and *Expository matter* together, into *definitional* matter, descriptive of the *main body* of each offence; and *modificative* matter, indicative of the several causes of *justification*, *aggravation*, *extenuation*, and *exemption*, which apply to it.

III. For securing, on every imaginable occasion, actual and perfect *notoriety*, — to each new set of rights acquired, and correspondent obligations contracted, — viz. by whatsoever *instruments* of conveyance or agreement contracted, and *that* not only *as soon as* contracted, but also *before* contracted, and thence before the time when repentance would come too late, — in the proposed English work, the already described *Promulgation paper:*

In neither of those French works, for the necessary *cognoscibility* and *notoriety* above described, is any security at all, in any of the

just above mentioned shapes, or in any other shape, either declared to be given, or discernible.

Here, Sir, you see, was a *memento* given; — it was not put to use: —here was even a *gauntlet* thrown down; — it was not taken up. Circumstanced as those respectable and truly useful servants of the public were, causes for such abstention might, without much difficulty, perhaps be found: — causes which it would, however, be more easy to imagine, than useful to express.

That, in the United States, any similar, or any other, causes should be found — found not only operating, but operating with effect, to the neglect of all those securities for the adaptation of law to the only useful *ends* of law,—is a result, the bare possibility of which cannot, by a feeling mind, be regarded with indifference.

The encouragement, not only stipulated for, as above, but demanded in advance, is a gem of too high a price, to be cast, either *into* the sea, or *across* the sea, without thought, or without such prospect of a suitable return as the nature of the case admits of.

Of the presumable fitness of any person for the execution of a literary work proposed by him, no evidence so apposite can, I suppose, be looked for, as that which is presented by a work or works, where any such happen to be in existence, taking for their subject the subject itself which is proposed to be taken in hand, or any part or parts of it.

An assortment, as nearly complete as could be formed, of such of my printed works as have taken for their subject any part or parts of the field of legislation, accompanies this letter, and solicits the honour of your acceptance. They are the fruit of above forty-five years devoted to the study of the science, and for little less than the whole of that time, without a view to anything but the improvement of it.

If to a discerning mind, such as that to which this offer considers itself as addressed, any such *loose presumptions*, as are capable of being afforded, by tokens of attention and approbation, given by foreign authorities, can be of any use, it can only be by *contributing* to produce, should such be the result, a recurrence to the only *direct* and *proper* evidence — viz. the works themselves.

Citizenship of France, decreed by one of the National Assemblies, on the same occasion on which the like mark of approbation was bestowed on *Joseph Priestley* and *Thomas Payne*.—In one of the Legislative Assemblies held during the consulate of the present Emperor, eulogium pronounced by one of the members on the above-mentioned work, and printed in the official paper — Nomination (though by subsequent incidents rendered fruitless) to the then existing *Institute* of France — Translation of that same work, made by order of the *Russian government*, and published in the *Russian language*, besides another published in the same language without authority — Translation of *another work*, viz. one on the mode of providing for the *poor*, made and published during the *consulate* by the municipality of *Paris*, and (if I have been not misinformed) *since* put, in some shape and degree or other, to public use — these tokens, together with the notices taken, as above, in the *French* and *Bavarian* codes, may, it is hoped, have the additional good effect, of rendering it pretty apparent, that governments of the most *opposite* forms and characters have found something to approve, nothing considerable to disapprove, and nothing at all to be *apprehensive of*, in the *views* and *dispositions*, with which the task here proposed would be taken in hand.

In a man's writing, the character of the *moral* part is not so clearly delineated, as that of the *intellectual* part, of his frame.

Artifice, in pursuit of some private end, might give birth to an offer such as the present, unaccompanied with any such intention as that of giving effect to the engagement sought: *levity*, though pure from original insincerity, might intervene at any time, and be productive of the same failure.

On the question concerning *intellectual* aptitude, the evidence lying before you, the judgment, Sir, will be your own. As to what regards *moral* promise, the nature of the case refers you in course to the gentleman, be he who he may, who in this country, stands charged with the affairs of your State. Transmitted to him, your letter—I mean the necessary *letter of authorization* above stipulated for — may, according to the result of his inquiries, be delivered or kept back.

§ II. *Advantages promised.*

As to the *advantages* that promise to result from the *gratuitousness* of the proposed service, though there is not one of them that seems much in danger of escaping the observation of the distinguished person to whom the proposal is addressed, yet, as it will naturally have to pass through a variety of hands, in all of which it cannot promise itself exactly the same degree of attention, it may not be amiss that these features of recommendation should in this place be distinctly brought to view.

1. In the first place, no *pecuniary* charge whatever being to be imposed on the public, or any part of it, the great and prominent objection which public works in general have to encounter, has here no place: — and be the chance for useful service rated ever so low, still, should any the smallest portion be reaped, it will be all clear gain.

2. By supervening *imbecility*, by *death*, or

even by *levity* and *caprice* on the part of the proposed workman, should the work be left in a state ever so far from *completeness*, still, to the public, there would be no positive loss: the situation in which in this respect it would find itself, would, at the worst, be but what it is at present — be but what it would have been, had no such proposal been ever made.

3. On these terms, the situation of the workman stands altogether out of the influence of any sinister motive, from which either an undue *protraction* of the business, or an undue *acceleration* of it, might be apprehended: — *protraction*, as if a salary were given, to be received during the *continuance* of it: *acceleration*, as if it were a sum of money to be once paid, or a life-annuity to commence, at the *completion* of it.

4. In respect of the *commencement*, and so far in respect of the *completion*, of the work, it admits of a degree of promptitude, the want of which might otherwise be fatal to the whole design. If *money* were necessary, consents, — I need not set myself to think or to inquire in what number — would be requisite to be obtained — obtained not only for the fixation of the sum, but for the origination of the measure, and, therefore, if not for the giving of *any* answer, at any rate for the giving any definitive and sufficient answer to this address. As it *is*, a single *fiat*, a letter, how short soever, from the authority to which this address is made, suffices for giving commencement to the work: and whatever subsidiary matters may hereinafter come to be suggested, may without inconvenience wait, in that case, all proper and accustomed delays.

5. It must, I think, be acknowledged to be a feature of no small advantage in any proposal, if it be such as to clear from all possible suspicion of sinister interest, all such persons to whom it may happen to take a part in the giving introduction or support to it.

To this sort of advantage, if there be any imaginable proposal that can lay claim, this, I think, cannot easily avoid being recognised to be thus happily circumstanced.

With or without any particular individual, in the character of proposed workman in his eye, suppose the pre-eminent person to whom this proposal is submitted — suppose him bringing forward a plan, tending to the accomplishment of the proposed work, but accompanied with a plan of *remuneration*, in the ordinary shape and mode. What would be, be he who he may, the *motives* to which the proposal would be referred? — referred, by adversaries at least, not to speak of friends? — they are by much too obvious to need mentioning.

Supposing it the good fortune of this proposal to obtain the sort of approbation which it aspires to, I have set myself to consider, by what *public tokens* it may be natural and proper for that approbation to declare itself The inability I have found myself under, of obtaining the documents necessary to secure me against falling into misconception respecting such of the functions of your high office, Sir, as may be found to have application to the present case, will, I hope, in case of missupposal, obtain for me the benefit of your indulgence.

The steps, to any or all of which it may happen to be taken in this view, present themselves to my imagination as follows: —

1. To lay the proposal before Congress at its meeting, with a *recommendation* to take it into consideration, stating, or not stating, the provisional authorization given, or intended to be given, to the author.

2. To cause a *minute* to be made in the books of the President's office, stating a resolution, on the part of the *President for the time being*, to lay before Congress any such part of the work as may have been transmitted during his continuance in office, together with a recommendation of the like operation, in the like event, to *future* presidents.

3. To transmit a copy of this proposal, accompanied with a like recommendation, to the legislative bodies of each, or any, of the several particular *States*.

4. To cause it, on public account, to be printed and published by authority, as other public documents are in use to be.

For affording to me the necessary encouragement, any one of the above testimonies of approbation would, if notified to me by the President, be sufficient: but the greater the number of them that may come united, the greater, of course, and the more operative, would be the encouragement.

Two things require to this purpose to be distinguished: — 1. The *design* itself; 2. Any work that may come to be presented by me in *execution* of it.

If, by any approbation bestowed upon the *design* itself, you were to be pledged for the like or any other tokens of approbation, to be bestowed on any *work* done in execution of this same design, this would be an objection against the bestowing any such provisional approbation on *the design itself.* When it comes, the work might appear ill adapted to its purpose, and, on that or any other account, not likely to be approved by the respective constituted authorities, on which the adoption of it would have to depend.

With submission, it appears to me, Sir, that, on the supposition that *the design itself* has met your approbation, it would not be a committal of yourself, were you to undertake for the forwarding, either to Congress or to the several legislatures, for their consideration, *any work*, that shall have been transmitted by me, in execution of *the design so approved.*

For, contrary to expectation, when pro-

duced, suppose the work to prove, in your judgment, to ever so great a degree absurd, and even ridiculous, nothing will there be to hinder you from saying so: wherever it goes, there it will lie: nor will it impose, on any person, any such trouble as that of taking it into consideration, unless some person or other should happen to be to such a degree impressed with the contrary notion as to make the proper motion for causing it to be taken into consideration, as in the case of any particular law proposed in ordinary course.

As to *the expense of printing*—to any such extent as in the different cases may appear requisite—an expense so moderate would hardly, I should suppose, be grudged by those to whom it belongs to judge: if it should, it would not be grudged by me.

§ III. *Objections answered.*

Against an enterprise of the sort in question, a host of jealousies and fears will naturally be springing up and arming themselves with objections. To such as appear best grounded, or most plausible, I proceed to submit such answers as the nature of the case presents to me.

Objection the 1st.—*Disturbance to property, and other existing rights.*—"What!" (cries the man of law) "remove our landmarks! revolutionize our property! throw every thing into confusion! Is this what you would be at? and is this to be the practical fruit of these fine theories of yours?"

Such, Sir, if not where *you* are—such, at any rate, would be sure to be his language *here*.

My answer is—So far as the objection confines itself to the law of *private rights*—when these, and any other number of declamatory generalities in the same strain have been expended, the only real mischief which they hold up to view, is, that which is reducible to this one expression—*to existing expectations, disappointment, productive of the painful sense of loss.*

What, then, is this mischief, by the apprehension of which the proposed Pannomion is thus to be put aside?

It is the very mischief, under which it is *impossible* that,—for want of a written, and visible, and intelligible, and cognoscible rule of action, in a word, for want of a *Pannomion*,—the people in your country should *not* be *at present labouring:* the very *grievance* from which it is the object of this, my humble proposal, to be admitted to afford them my best assistance towards working out their deliverance:—the principal grievance, which it would not only be the *object*, but, to a considerable degree, the *sure effect*, of a Pannomion, *to remove.*

Throughout the whole extent of the territory of *the United States* (new-acquired dependencies excepted, in which matters cannot but be still worse,) what is it that, at this moment, forms the basis of the rule of action? What but an ideal and shapeless mass of *merely conjectural* and *essentially uncognoscible* matter?—*matter* without *mind*, *work* without an *author;* occupying, through the oscitancy of the legislature, a place that ought to be filled; and exercising in it the authority that ought to be exercised, by *law?*

Nullis lex verbis, a nullo, nullibi, nunquam—
Law, in no *words*, by no *man*, *never*, made:—

Law which, having had for its *authors*, not the *people* themselves, nor any persons chosen by the people, but the creatures, the ever-removable and completely and perpetually dependent creatures of the *king alone* (till *the revolution* this was completely true, and even since, it has not wanted much of being so,) had, of course, for its main object, not the good of the *people*, but, as far as the blindness or patience of the people would permit, the interests—the sinister and confederated interests—of the *creator*, under whose influence, and the *creatures*, by whose hands, it was spun out:—

Law, blundered out by a set of men, who,—their course of operation not being at their own command, but at the command of the plaintiffs in the several causes,—were all along as completely destitute of the *power* as, under the influence of sinister interest, they could not but be of the *inclination* to operate in pursuit of any clear and enlarged views of utility, public or private, or so much as upon any comprehensive and consistent plan, good or bad, in the delineation of the *rights* they were *confirming*, and the *obligations* they were imposing:—and which accordingly never has been, nor, to any purpose, good or bad, ever could have been, nor ever can be, the result of *antecedent* reflection, grounded on a *general* view of the nature of each case, of the exigencies belonging to it, or the analogous cases connected with it: nor, in a word, anything better than a shapeless heap of odds and ends, the pattern of which has, in each instance, been necessarily determined by the nature of the demand, put in by the plaintiff, as above:—

Law which, being, in so far as it could be said to be *made*, made at a multitude of successive periods, and for the use and governance of so many different generations of men,—men, imbued with notions, habituated to modes of life, differing, more or less widely, from each other, as well as from those which have place at present,—would, even had it been well adapted to the circumstances and exigencies of the times, in which its parts respectively came into existence, have, to a considerable extent, been thereby rendered, not the *better* adapted, but by so much the

worse adapted, to the notions and manners *now* prevalent, to the state of things *at present* in existence:—

Law, which, by its essential *form* and character, as above indicated, is, so long as it retains that form, altogether disabled from either giving to itself, or receiving from any other quarter, *improvement* or *correction*, upon a scale of any considerable *extent;* which, even upon the *minutest* scale, cannot give to itself any improvement in the way of *particular utility*, but at the expense of *general certainty:* nor, even at that price, but by a course of successive acts of arbitrary power—acts productive, in the first place, of a correspondent succession of particular *disappointments*, followed, each of them in proportion as it comes to be known, by those more extensively spreading *apprehensions of insecurity*, which are among the inseparable concomitants and consequences of that ever deplorable, howsoever originally necessary and unavoidable, taint of iniquity, inherent in the very essence of *ex-post-facto* law.

Of *ex-post-facto* law, did I say? Yes: for that which by common sense, speaking by the mouth of *Cicero*, has been spoken of as the most mischievous and intolerable abuse, of which, in the form in which it is called *written* or *statute* law, the rule of action is susceptible, is an abomination interwoven in the very essence of that spurious and impostrous substitute, which, to its makers and their dupes, is an object of such prostrate admiration, and such indefatigable eulogy, under the name of *common* or *unwritten* law.

Of *unwritten* (for such is the term in use,) but much more properly of *uncomposed* and *unenacted* law (for of *writing* there is, beyond comparison, more belonging to this spurious than to the genuine sort)—of this impostrous law, the fruits, the perpetual fruits, are —in the *civil* or *non-penal* branch, as above; *uncertainty*, *uncognoscibility*, *particular disappointments*, without end, *general sense of insecurity* against similar disappointment and loss; —in the *penal* branch, *uncertainty* and *uncognoscibility*, as before; and, instead of compliance and obedience, the *evil of transgression*, mixed with the *evil of punishment:* —in both branches, in the breast and in the hands of the judge, *power* everywhere *arbitrary*, with the semblance of a set of rules to serve as a *screen* to it.

Such are the fruits of this species of mock law, even in the country which gave it birth: how much more pregnant with insecurity—with unexpected and useless hardship—as well in the shape of *civil loss*, as in the shape of *penal infliction*, and non-prevention of crimes, must it not necessarily be, in a country into which the matter of it is continually *imported;* imported from a foreign country, whose yoke the American nation has, to all other purposes, so happily for both nations, shaken off.

Not that I am by any means unaware of the prodigious mass of rubbish, of which, on the importation of English common law into America, part was, on the change of place, naturally, or even necessarily, left behind—other parts, since the original importation, at different times, so wisely and happily cast out of it: *religiously persecuting* laws, *manorial rights*, *tithes*, *ecclesiastical courts*, in several of the States at least; distinctions between *law* and *equity*, secret *Rome-bred* mode of extracting testimony, I believe everywhere, —and so forth. Not that I am by any means insensible to the prodigious alleviation, which, from the removal of so large a portion of it, the burthen cannot but have experienced. But though, of the whole mass already imported, as well as of each successive mass, as they come respectively to be imported, there is, and will be, so much the less that needs to be *attended* to; yet, from the respective magnitudes of those several masses so imported, no defalcation ever has been made, or can be made. The consequence is, that what alleviation soever the burthen of the law has ever received, or can ever be made to receive, as above, viz. by successive patches of *statute* law, applied to the immense and continually growing body of *unwritten*, alias *common* law, is confined to the *matter*, leaving the *form* of it as immeasurable, as incomprehensible, and consequently, as adverse to *certainty* and *cognoscibility*, as ever.

Yes, Sir, so long as there remains any the smallest scrap of *unwritten law* unextirpated, it suffices to taint with its own corruption, —its own inbred and incurable corruption, —whatsoever portion of *statute* law has ever been, or can ever be, applied to it.

So far then as *disturbance* to existing *rights* is the disorder in question, the proposed operation, so far from producing or aggravating such the disorder, presents not only the sure, but the only possible remedy. Disturbance? —a state of disturbance,—of perpetual and universally extending disturbance—is the very state in which they have hitherto existed; have existed, and, until fixed and secured by the application of this sole remedy, are condemned to remain till the end of time.

All this while, incapable as, in respect of its *form*, it is of serving, in any tolerable degree, in its present state, in the character of a *rule of action* and *guide to* human *conduct*, nothing could be much further from the truth, than if, in speaking of the *matter* of which English common law is composed, a man were to represent it as being of no use. Confused, indeterminate, inadequate, ill-adapted, and inconsistent as, to a vast extent, the provision or no-provision would be found to be, that has been made by it for the various

cases that have happened to present themselves for decision; yet, in the character of a *repository* for such cases, it affords, for the manufactory of real law, a stock of materials which is beyond all price. Traverse the whole continent of Europe,—ransack all the libraries belonging to the jurisprudential systems of the several political states,—add the contents all together,—you would not be able to compose a collection of cases equal in variety, in amplitude, in clearness of statement —in a word, all points taken together, in instructiveness—to that which may be seen to be afforded by the collection of English *Reports of adjudged cases*, on adding to them the *abridgments* and *treatises*, by which a sort of order, such as it is, has been given to their contents.

Of these necessary materials, the stock already in hand is not only rich, but, one may venture to say, sufficient: nor, to the composition of a *complete* body of law, in which, saving the requisite allowance to be made for human weakness, every imaginable case shall be provided for, and provided for in the best manner, is anything at present wanting but a duly arranging hand.

Objection 2. *Foreign Yoke.—It was to free ourselves from the yoke of foreign law that we took up arms against the monarch of England; and shall an obscure subject of the same nation fasten another such yoke upon our necks?*

It may perhaps appear an idle precaution, to bring to view, in the character of an objection capable of being urged, an observation so palpably void of substance. But it is not always by the most rational argument that the strongest impression is made. At any rate, the answer will, I flatter myself, be found sufficient.

1. The yoke, the foreign yoke, is already about your necks: you were born with it about your necks.

What your proposed scribe does, if he does anything, is to facilitate to you the means of relieving yourselves from it.

2. Year by year, or rather *term* by *term*—that is, *quarter* by *quarter*—the mass and burthen of it receives, at present, its increase. What he does, if he does anything, will be to help to relieve you from such increase.

3. By him, let him do what he may, no yoke will be imposed; nothing, like the imposition of a yoke, either done, or so much as attempted. By him, let him do what he may, no act of power will be performed, not any the minutest particle of power exercised. The honour for which he is suing, is that of being admitted to work in the character of a servant. Labour alone will be *his* part: acceptance, rejection, alteration, decision, choice, with as much or as little labour as it may be your pleasure to bestow upon it, will be *your's*.

Yes:—if, to have part in the governance and plunder of you for seven years, he were to be occupied in cringing to you, and in flattering you, for as many days or weeks, then indeed there *might* be power for him to exercise, then indeed there *might* be a yoke for you to take upon yourselves, and for him to impose:—but any such authority is not more completely out of his reach, than it is, and ever would be, out of his wish.

4. In suing to be thus employed himself, it is no less opposite to his wish, than above his power, to exclude from the same employment any of yourselves. But of this a little further on.

Heavy or light, by your own hands, if by any, will the burthen, if any, be imposed.

5. Innumerable are the yokes,—the additions to the existing foreign yoke,—by which, until you take this only method of securing yourselves against all such nuisances, the burthen, you *now* labour under, will continue to be *increased*.

Not a year, not a quarter of a year, but, here, in this country, fresh loads are produced of the excrementitious matter, of which this burthen is composed. Of this matter, this or that portion, will it, or will it not, by such or such a time, have, in your country, begun to swell the load? Upon arrivals or non-arrivals—upon winds and waves—upon good or ill-humour between the two nations—will even *possibility* depend in the first place.

Let *possibility* be now converted into fact. The produce of the last twelvemonth, or of the last quarter, or such other portion as accident may have determined, is now arrived. Upon whom, on the occasion of each cause, will the acceptance or rejection of it, and of each particular portion of it, depend? Upon yourselves altogether?—upon your appointed legislators?—upon the aggregate of all your legislative bodies?—or, upon any one of them? No: but, on each particular occasion, upon the will of some one or other such small number of yourselves, acting as judge or judges.

Take, for example, any one such judge, upon this or that case, that chance has brought before him, this or that English decision (let it be supposed) bears; will it, or will it *not*, be taken by him for his guide? On contingency upon contingency depends the answer. The last cargo, has it, in the whole, or any part of it, come into his hands, or under his cognizance? if not the whole, but a part only, *what* part? The case produced to him, will he, or will he not, pay regard to it? Yes or no depends—(for I see not how it should fail of depending)—altogether upon his good pleasure. If it be such as suits his views, he makes use of it: if it be such as does not suit his views, he turns aside from it.

6. Innumerable—and many of them still more obscure than your proffered servant—

are the workmen, who, in this country, and at present, bear, each of them, a part, in the fashioning of these successive accretions to this your foreign yoke.

At present, under the existing system of blind and sheepish acquiescence, who are they, who thus, — in conjunction, in each instance, with this or that judge, — become respectively the arbiters of your fate? Speaking of individuals, to say *who*, is, in any instance, impossible: speaking generally, a judge, or bench of judges, nominees of a foreign monarch; — or, to speak more correctly, as well as particularly, a mixed yet uncommunicating multitude, composed of *judges, advocates, self-appointed note-takers, law report writers, law treatise-makers, law-abridgment makers,* and publishing *law-booksellers.*

Suppose, on the other hand, the proposed work executed, the proposed *Pannomion* completed; — in what state would the rule of action be among you in that case? Comprised it would be, the *whole* of it, in a small number of volumes; the *part* necessary to each man in particular in some *one* small volume: — the whole heap of foreign lumber, existing and future contingent, as completely superseded, rendered as completely useless, as an equal quantity of *school divinity,* or *Rome-bred canon law.*

Wide, in this respect, is the difference between a situation, in which not a particle of *labour* has place without a correspondent particle of *power* attached to it, and a task which would have to consist purely of labour, without any the least particle of power attached to it.

But, though thus bare of power would be the service in question, if rendered by an obscure and unknown *foreigner,* the case not only might be, but naturally would be, very different, if a service of the self-same nature were to find the performance of it lodged in the hands of a *native.* In *that* case, whatever *reputation,* and consequent *influence,* it might happen to a man to obtain by the execution of it, would, in his situation, and for his benefit, convert itself into so much *power.* In power, in short, not only would the performance of the service *terminate,* but it is in power that the choice of the person for the performance of it would have *originated.* If, therefore, the business finds itself in the hands of a foreigner, there will be at least *this* advantage, viz. that the judgment to be pronounced upon it will stand so much the clearer of the influence of local, as well as personal, enmities and partialities, and the work stands so much the better chance of being judged and decided upon, on the ground of its own intrinsic merits, — its own fitness for the intended purpose.

Discussions of this sort do not, it must be confessed, shed any very brilliant lustre upon human nature; — but so it is that we are constituted: and, being thus constituted, it is impossible for us to act either prudently or beneficially, any further than as we know ourselves for what we *are.*

As to *local* jealousies, to my eyes, dissension, be the seat of it where it may, is never a pleasing object. But, though in some measure it depends on a man's choice what objects he shall *fix* his eyes upon, it depends not altogether upon his will, what objects shall *pass before* them.

By the words *northern* and *southern,* if my eyes or my memory do not deceive me, one cause of division, more or less active, has been indicated, as having place, and more or less frequently manifesting its influence, in your confederacy. Supposing this to be so, what is then the consequence? For public service in this or in any other line, if a member of the southern division presents himself, or is held up to view, jealousy and opposition gather in the northern regions: and so, *vice-versâ.*

Another source of division, though to my unpractised eye not so clear and intelligible an one as the foregoing, is that which is brought to view by the words *democrat* and *federalist.*

Under these circumstances, be the nature of the work ever so uninviting, if a hand were to be offered for it, from one of the sides distinguished as above, in the natural course of things, it would find on the other side, hands drawn up in array, and prepared, if possible, to repel it. Such at least would be the case *here.* Such, in a word, would be the case (for such has ever hitherto been the case) wherever there have been *parties:* — wherever there has been either *liberty,* or the appearance of it. If to this rule the land of the United States afford an exception, it is a land — not of men, but angels.

Such, then, are the perils which a work of the sort in question would have to encounter, if proposed for a *native* workman: perils, which, in proportion to the utility of the work, would, it is apprehended, be more likely to receive increase than diminution: from these perils, at least, it would be saved, by acceptance given to a remote and foreign hand.

Objection 3. *Foreigner's necessary ignorance. — A foreigner, by whom the territory has not, any part of it, ever been, or ever will be visited, — who, with the population, with the territory, or its local peculiarities, never has had, nor proposes ever to have, any the least personal acquaintance, — a person so circumstanced, — a person thus ignorant — unavoidably and incurably ignorant — of so many necessary points of knowledge, — is he a person who, with any propriety, can be looked to for any such service?*

1. To this question, one answer may be

given by another question. The *legislators*,—such as they are, to whose combined exertions the loads of *writing*, of which our and your *unwritten* law is composed, owe their existence,—have already been laid before you, and brought under review:—*our* advocates, *our* judges, *our* note-takers; *our* report-makers, *our* treatise and abridgment-makers, *our* publishing law-booksellers. By how many of all these functionaries has the legislative system of the United States been ever studied—been ever so much as thought of—or the country visited?

2. Another answer is—that, upon a closer scrutiny, the points, which present a demand for local knowledge, would not, it is supposed, be found to cover, in the field of law, so great an extent, nor yet to be so difficult to discriminate beforehand, as, upon a transient glance, general notions might lead any person to imagine.

3. Nor, if I may venture to say as much, would it be easy to find any person, more completely aware of the demand, presented by the nature of the case, for attention to those local exigencies; nor more completely in the habit of looking over the field of law in this particular view.

Of this disposition, and this habit, exemplifications of considerable amplitude may be seen, in the already-mentioned work, which, for these nine years, has been under the public eye: and by that work, Sir, I am saved from the need of attempting, on the present occasion, to give you any further trouble on this head.

Thus in the case of *penal* law. Of the *genera* of offences,—as distinguished or distinguishable by their *generic* names—*murder*, *defamation*, *theft*, *robbery*, and so forth,—definitions may, for the most part, be the same all the world over. But for *particular species*, occasion may be afforded, by particular local circumstances:—and so in regard to causes of *justification*, *aggravation*, *extenuation*, or *exemption*, with demand for corresponding varieties, in respect of *satisfaction* or *punishment*;—And so in regard to *contracts*.

Accordingly, in any draught which I should draw, care would be taken, not only to keep the distinction all along in mind, but to keep pointed towards it the attention of all those to whom in dernier resort it belonged to judge.

4. I say *to those to whom it belonged to judge*:—for, as it never would be by myself, neither by any one else let it be forgotten,—that, of any body of proposed laws, to which it may happen to have been drawn up by the proposed draughtsman, there is not any part, of which the legislative bodies in the several United States will not take, each of them according to its competence, perfect and effectual cognizance: cognizance no less perfect and effectual than what has been taken of any other portion of the matter of law, to which their sanction has respectively been given or refused.

Whatsoever, therefore, may, in relation to the local points in question, be the *ignorance* of the proposed and supposed foreign draughtsman, and, in his draught, whatsoever may have been the *errors* produced by these ignorances,—all such errors will, for their correction, have the same instruments and opportunities as any other errors that ever have been, or may ever come to be, made and corrected.

5. Not but that, on this, as on most other occasions, it is more to be desired that errors, of whatever kind, should, particularly in such a work, have never been made, than that, having been made, they should be corrected:—and, by original *exclusion*, not only the time and labour necessary to *correction* would be saved, but the danger of *non-correction*—of their *not* being corrected—avoided.

Objection 4. *Shame of being beholden to a foreigner.*

But a *foreigner*—how necessary soever the work itself may be—would it not, to American citizens, be matter of just shame, to see a foreign hand entrusted with, or so much as employed in, the execution of it? America, the whole population of United America—the eight or nine millions, or whatever may be the amount of it—among such multitudes of hands, constantly occupied in the business of legislation, does it not contain so much as a single one, competent to such a task?

A question this, which will be apt to appear much more within my competence to *put*, than to find an answer for. I shall venture, however, to submit answers more than one:—

1. In the first place, what I believe is certain, is—that, whatsoever number of persons thus qualified may, at this time, be in existence, no one such person has as yet, at any time, made himself known as such, or been recognised as such.

2. In the next place,—be the number of persons, in an equal, or by any amount superior, degree, competent to the task in question, ever so great—of the offer here submitted, it is no part, either of the design, or tendency, to deprive the *United States* of the services of any one. On the contrary, among its tendencies is that of calling forth into action, to this very purpose, and on this very occasion, whatsoever qualifications or capabilities, of the kind in question, may happen to be in existence.

3. Of this sort of national jealousy, if the effect be to call forth into existence any competitors, who would not otherwise exist—so far at least, if the sort of work, supposing it well executed, be deemed a useful *one*—in such case, as well the utility of this offer as the propriety of giving acceptance to it, will

be out of dispute; and, in such a competition, the danger that the work of a perfect stranger should, to the prejudice of local interests and influences, obtain an undue preference, will hardly appear very formidable.

4. If, on the other hand, it should happen to it, either to be the only work produced, or, finding rival works to contend with, to be really, in the judgment of the competent judges, thought better adapted than any other to the intended purpose,—in either of these cases, any such supposition, as that, on the occasion of such a work, these same judges would see their country less well served, or not served at all, rather than see it served by a foreign hand,—and that, accordingly, they would put it in the power of any foreigner, to preclude them from the benefit of a good body of law, or so much as of a single good clause in a law, merely by being the first to propose it, is that sort of supposition, which, if seriously made, would not, I imagine, be, very generally, well received.

5. Whatsoever disposition toward jealousy it might happen to an offer of this sort to have to encounter, a man, of whom it were perfectly known, that in person he could never be *present*, to give to any one the sort of offence which such a disposition supposes, should naturally, on this supposition, present such a ground for acceptance, as should give him, on this one score at least, the advantage over a native. On affections of this kind, distance in respect of *place*,—especially when the continuance of it is certain,—produces an effect intimately analogous to, and little different from, that of *time*. In the present case, were the proposed workman already numbered among the dead, he could not be more effectually placed out of the sight of the people, and in particular of the constituted authorities, in whose service it is his ambition thus to place himself, than, to the day of his death, he would find it necessary to remain, if this his offer found acceptance.

6. So far from operating as an objection, at least in the mind of any gentleman who fills the high station to which this offer is addressed, what I should expect is—to find this very circumstance of foreignership placed, and on this very score, to the account of advantage.

There are certain situations, and those highly important ones, for the filling of which it has been a known maxim among republican states, to resort to foreigners in preference to natives. Among the Italian republics, this sort of policy was applied—sometimes by usage, sometimes by positive law—not only to the subordinate situation designated among us by the title of *judge*, but to that of *podesta:* a sort of supreme monarchical magistrate, to whose power, while it lasted, it seems not very easy to assign any very distinct limits. My books are not at present within my reach: but in the case of the *podesta*, instances, more than one, will be found in Sismondi's lately published history of the Italian republics: and, in the case of *judge*, I have read laws to that effect in the codes of Italian states, more than one: and if I do not misrecollect, these instances, or some of them, are mentioned in the "*Defence of the Constitution of the United States*," by Mr. Adams.

Of this preference the cause—the efficient cause—seems manifest enough. For any of those great and enviable situations, seldom could a man, whose character was such as to afford him any chance of finding acceptance, offer himself, without raising up against himself, besides a band of rivals, a much larger host of adversaries.

Nor was the *justificative* cause—the *reason*—much less clear or impressive. In any such powerful situation, no *native* could seat himself, without bringing into it, in his bosom, a swarm of sinister interests, prejudices, and partialities.

§ IV. *Advances already made towards the Execution of the proposed Work.*

The degree of *advance* already made by my labours in the field of legislation—and the order of *priority* in which, if undertaken, the several distinguishable parts of the *Pannomion* would be proposed to be executed—these seem to be of the number of the topics, on which something will, on such an occasion, be expected; and on which accordingly it will not be allowable for me to be altogether silent.

On these topics, on the other hand, any considerable *details* would, if comprised within the compass of this paper, swell it to such a bulk, as to subject to too great a degree of uncertainty its prospect of finding a reader, in the exalted and busy station to which it is addressed.

The point for your consideration, Sir, supposing the work in itself a desirable one, will, unless I misconceive the matter, be found to be—whether, if this proposal should be passed by without acceptance, the rejection would leave an adequate probability of seeing the work executed, at any future period, and under other circumstances, to equal advantage?—and, in particular, whether there be any such probability, that any *other* person will arise, who having, without receipt or prospect of pecuniary retribution, made equal advances in the prosecution of such a design, shall, upon the same desirable terms, be ready to undertake to do what depends upon him towards the completion of it?

To enable you to afford to yourself a proper answer to these questions, the following statements, compressed as they are, and consequently, in a proportionable degree, defi-

cient in point of specific information, may yet perhaps be found to suffice:—

1. In regard to the *penal code*, the work is already in a state of considerable forwardness. That it was so, so long ago as the year 1802,—not to speak of a much earlier period,—may be seen from the work edited in that year in the French language by *Mr. Dumont*. What may be seen upon the face of that work is indeed a *sample;* but it is no more than a sample: a great deal more had even then been executed than is there exhibited; perhaps the greatest part of the whole:—a few months would, if I do not much miscalculate, suffice for the completion of it—I mean, *in terminis.*

2. As to the *civil* code, in the adjustment of the *terms* of it, but little advance has been made: but, in respect of *leading principles*, of which, in regard to *form* as well as matter, a pretty ample view may in that same work be seen, they have long ago been settled.

3. Of the subject of the *judicial establishment*—(the *judiciary* is, I think, the more concise denomination it goes by with you,)—a pretty full view may be seen in the printed, but never yet published, papers drawn up about the year 1790, on the occasion of the French revolution: copy herewith sent, as per list. To adapt it to the purpose of the United States, if the system actually in force there should be regarded as susceptible of improvement, would of course require considerable modifications.

4. As to *procedure*—*judicial procedure*,—in the adjustment of the principles of *that* branch of the law, considerable progress was necessarily made, of which the result was brought to view, and may be seen in the course of the inquiry made into the subject of the correspondent part of the *official establishment*, as above.

Since that time, farther advances were made, and presented to view in the work intituled *Scotch Reform, &c.*, published anno 1806: copy herewith sent.

In addition to this, a work, complete, or nearly so, on the subject of *Forthcomingness*,—viz. on the most effectual, and in other respects most proper, means to be employed for ordering matters in such sort that, whether for the purpose (as they say in French) of *justiciability* (I mean being placed at the disposal of the judicial authorities,) or for the purpose of *evidence* (I mean being made to furnish evidence,) as well all *things* as all *persons* requisite shall, on each occasion, be *forthcoming*,—lies by me in manuscript.

5. The subject of *evidence* has been examined in its whole extent, and sifted to the bottom. A work of mine on this subject, under the title of *The Rationale of Evidence*,—enough to occupy two moderate-sized quarto volumes,—has been for some time in the hands of another friend of mine, and will be in the printer's hands in the course of about two months.

For drawing up a code *in terminis*, grounded on the principles there laid down, very little time would suffice. Of the customary *exclusionary rules*, rules, which are not, in the law of any country, either *consistent* with one another, or *adhered to* with any tolerable degree of constancy,—the place would be mostly occupied by a set of correspondent *instructions:*—Instructions, from the *legislator* to the *judge*, pointing out, *inter alia*, as causes of *suspicion*, those circumstances which, in general, are employed in the character of causes of *rejection*—absolute and inexorable *rejection.*

On several subjects *not* included, as well as on several of those which *are* included, under the above heads, disquisitions may be seen in the subjoined list of printed works. But, to the present purpose, no separate mention of them seems requisite.

The printed but never published fragment, on the subject of the *Art of Tactics* as applied to *political assemblies*, is but *one* essay out of some *thirty* or *forty*, which were at that time written, and which, taken together, did not want much of having gone through the subject in its whole extent.

But this is a subject, which I should scarcely myself propose to include in the *Pannomion.* It is a subject, on which each political body will naturally feel itself disposed to *legislate*, or at least to *act*, according to its own views of its own *exigencies;* meaning exigencies considered with a view to the *public* good,—the good of that part of the *public service;*—not to speak of *particular interests* and *prejudices.*

As to *constitutional law*, I mean that branch which regards the mode of *appointing* the several public functionaries, with their respective *powers* and *obligations:*—with *you*, I believe, the appellative has a sense somewhat more extensive. As to *constitutional law* thus explained, I mention it for no other purpose than to show that it has not been overlooked. In respect of the *matter*, no demand for alteration has presented itself to my view, nor should I myself be disposed to look out for any. In respect of the *form*, something might possibly be found needful to adapt it to the other parts.

But, though it were to be transcribed without the alteration of an iota, still, for symmetry and compactness, it might perhaps be of advantage, that it should go through the hands, by which the other parts were drawn up.

As to the *order* of operation—I mean as between the different *parts* of the proposed *Pannomion*—the *penal* code is that which, I imagine, has already presented itself to your thoughts as the part which claims the first

place. In respect of the *matter* of it, it is that in which the demand, for variation presented by *local* circumstances, will naturally be least extensive; and the comparative progress already made in it would, in default of material reason to the contrary, be of itself sufficient to determine the preference.

I know not whether the *legal* circumstances of your recent territorial acquisitions will be thought to add anything to the reasons for acceptance. In the character either of *subjects* or *fellow-citizens,* you have to make provision for the *legal* exigencies of a new mass of population, differing from you not less in laws and customs than in language. In the state of these their laws, alteration in many points must already have been necessitated, — alteration in many others must be continually in contemplation. Besides the advantage of having the work done — whatsoever there may be of it to be done — upon an already considered and comprehensive plan, might it not, to the *new* citizens in question, be in some degree a matter of satisfaction to learn, that the preparation of the business was consigned to hands, for whose *impartiality* there would be such a security as could scarcely have been in contemplation otherwise?

To contemplate the matter on the footing of *presumptions* merely, — and laying out of the case any such ground for acceptance as the works themselves may be found to afford, — I wish to be clearly understood, in what I say as to the *considerations,* which, in the present instance, may appear to operate in favour of the experiment, of receiving into the field of legislation the labour of a *foreign* hand. They are reducible to this simple circumstance, — viz. that of the existence of a person, by whom so large a portion of time and study has been bestowed upon the business, coupled with the assumption that, neither in the *British Empire,* nor in the *United States,* does there exist that other person, by whom, upon any *comprehensive* plan, an *equal* portion of time and study — I might perhaps add, *any* portion of time and study — has been employed — especially with any *ameliorative* views.

One thing I am ready to admit, and am fully assured of: and *that* is, that if, on *general* grounds, and setting aside any such *casual* opportunity, a resolution were come to in your country, to set about the drawing up a *Pannomion,* reasons for looking beyond the American States (I mean on the ground of abstract aptitude, and setting aside those which have reference to *local jealousies* and *partialities)* would not be to be found.

No, Sir; — not the smallest doubt have I, but that, if, in both countries, a *Pannomion* were to be drawn up, and, in both countries, hands were to be looked out for, in the class of practising lawyers, the hand of an *American* lawyer would, even for the use of *England,* present beyond comparison a fairer promise than that of a lawyer of the *English* school.

What this persuasion has for its ground, is — the observation of the improvements — the prodigious improvements — which, in *matter* and even in *style,* since its voyage to America, the law of *England* has received from *American* hands.

Laying out of the case those necessary changes, which, in the *constitutional* branch, have been produced by the emancipation, and the change in the form, of government — (subjects to which my attention neither has turned, nor is disposed to turn itself,) those which, on this occasion, I have in view, are those which, through the medium of such materials as I have been hitherto able to collect, I have had the opportunity of observing in the *penal* branch, in the *civil* branch, and in the system of *procedure.*

Among these, though there may be some, which, being the result of the change in the *constitutional* branch, could not, consistently with the existing constitutional system, be introduced into the mother-country, yet there are others — and those occupying the greatest extent, — which, with as much advantage, and with as little inconvenience, might be effected in England, as they have been in the United States.

Accordingly, but for the adverse interest of professional men, and the lazy and the stupid confidence, or rather thoughtlessness, with which the bulk of the people have resigned their best interests into the hands of a class of men, who, in so far as affection is governed by personal interest, can never be otherwise than their natural and irreconcileable enemies, — long ago would these same amendments have been made in *this* country.

In America, the work could not fall into the hands of any persons, to whom the practice of *amendment* was not familiar: — who had not been in use not only to see amendments made — and made to a great extent, — but made with manifest and undeniable good effect: whereas, in *this* country (saving exceptions in too small a number to be mentioned) any such work would look in vain for operators, to whom the very idea of amendment was not an object of unaffected terror and undisguised enmity.

In this state of things, suppose any person, myself for example, after making up a list of *these amendments,* were to come forward with the proposal to introduce the same amendments *here:* — what would be the reception it would meet with? — "Oh! you want to republicanize us, do you?" This would be the cry set up by the men of law — echoed by all others (a countless multitude) who have any share in the profit attached to the

existing abuses: — and in this cry would be found a full and sufficient answer. Foundation, it is true, it would have none. But, such is still the blindness and indifference of the people at large, — so bigoted their admiration, so prostrate their adoration, of their natural and implacable enemies and oppressors.

Such is the bigotry and indifference, which in this country is still prevalent. *How long* is it destined to continue? This is more than, with any precision, a prudent man will venture to answer. Thus much, however, I will venture to predict, viz. that before this century, not to say this half century, has passed away, this shame to *the British Empire* will likewise have passed away.*

No. II.

James Madison, then President of the Congress of the American United States, to Jeremy Bentham, London.

Washington, 8th May 1816.

Sir, — I have a greater debt of apology, I fear, than I can easily discharge, for having so long omitted to answer your letter of 1811. I flatter myself, however, that you will not do me the injustice to believe that the failure has proceeded from any insensibility to the importance of its contents, or to the generous motives which dictated it; and as little from a want of respect for the very distinguished character you have established with the world by the inestimable gifts which your pen has made to it. It happened that your letter was received in the midst of occupations incident to preparations for an anticipated war; which was in fact the result of the anxious crisis.

During the period of hostilities which apparently became more and more uncertain in their duration, there could not be leisure, if there were no impropriety, in opening a correspondence. On the removal of these difficulties by the happy event of peace, your letter was among the early objects of my recollection. But a variety of circumstances, which it would be tedious to explain, deprived me of an opportunity of bestowing the proper attention on it, until the recent busy session of Congress became a further obstacle, which has just ceased with the adjournment of that body.

On perusing your letter, I see much to admire in the comprehensive and profound views taken of its subject; as I do everything to applaud in the disinterested and beneficent offer it makes to the United States; and it is with the feelings naturally flowing from these considerations, that I find myself constrained to decide, that a compliance with your proposals would not be within the scope of my proper functions.

That a digest of our laws on sound principles, with a purgation and reduction to a text, of the unwritten part of them, would be an invaluable improvement, cannot be questioned; and I cheerfully accede to the opinion of Mr. Brougham, that the task could be undertaken by no hand in Europe so capable as yours. The only room for doubt would be as to its practicability, notwithstanding your peculiar advantages for it, within a space and a time such as appear to have been contemplated.

With respect to the unwritten law, it may not be improper to observe, that the extent of it has been not a little abridged, in this country, by successive events. A certain portion of it was dropped by our emigrant forefathers as contrary to their principles, or inapplicable to their new situation. The colonial statutes had a further effect in amending and diminishing the mass. The revolution from colonies to independent states, lopped off other portions. And the changes which have been constantly going on since this last event, have everywhere made, and are daily making, further reductions.

To these remarks, I may be permitted to add, that with the best plan for converting the common law into a written law, the evil cannot be more than partially cured; the complex technical terms to be employed in the text, necessarily requiring a resort for definition and explanation to the volumes containing that description of law.

These views of the subject, nevertheless, should they have the validity attached to them, still leave sufficient inducements for such a reform in our code, as had employed your thoughts. And although we cannot avail ourselves of them, in the mode best in itself, I do not overlook the prospect that the fruits of your labours may in some other not be lost to us: flattering myself, that my silence will have nowise diverted or suspended them, as far as the United States may have a particular interest in them. It will be a further gratification if it should experience from your goodness, the pardon which I have ventured to ask. Whatever may be the result, I pray you, Sir, to be assured of my distinguished esteem for your character, and of the due sense I entertain of your solicitude for the welfare of my country. James Madison.

P. S. — Be pleased to accept my thanks for the valuable collection of your works

* In the manuscript letter, as sent to the President, followed a paragraph or two, the brouillon of which cannot, at this time, be recovered. Nothing of moment is supposed to have been contained in it. To it was subjoined a list, as far as it could be then made out, of the author's printed works, edited and inedited. And of such of them as could then be procured, several being out of print, copies were therewith sent. — (*Note to 1st Edition.*)

which accompanied your letter. I have directed a copy of Blodget's Tables, and of Hamilton's works, to be procured and forwarded to you; and will endeavour, as some further return for your favour, to have added to them a few other publications.*

No. III.

Albert Gallatin, Minister Plenipotentiary from the American United States to the Court of London, to Simon Snyder, Governor of Pennsylvania, introducing a Letter from Jeremy Bentham to the said Governor.

London, 18th June 1814.

Sir, — Mr. Jeremy Bentham intends to address you, for the purpose of making a gratuitous tender of his faculties and services, in preparing a code or system of *civil* and *penal law*, for the subsequent inspection and revision of the Legislature at Pennsylvania. This object had at a former period called the attention of the State; and the late Judge Wilson was, by the public appointment, engaged for some time in that work. Its difficulty is almost equal to its importance, and seems to have prevented his subsequent attempts. So far as it is practicable, Mr. Bentham, having devoted near forty years to the investigation of the subject, and from his rare talent of analysis and classification, appears particularly fitted for the undertaking. I have ventured to say so much, because those of his works which have appeared in the most popular dress, happen to have been published in the French language. I allude to his "*Treatises of Legislation*," and to his "*Theory of Rewards and Punishments*," edited by Mr. Dumont, and respectively published in the years 1802 and 1811. These works are generally considered as the best of the age, on the subject of which they treat. Had not other avocations prevented, *I would have translated the shortest*. For a brief account of these, I beg leave to refer you to the Edinburgh Review. Those printed in English, Mr. Bentham intends, I believe, to send to you. Those against the *laws to forbid usury*, and against *taxes on law proceedings*, are perhaps the most popular. I would recommend the perusal of that entitled "*Scotch Reform*," as containing, amongst other things, an able defence of the principle, of the plan actually adopted in Pennsylvania, by the extension of the powers of justices of the peace and the arbitration laws, but not known to the author, viz. the submitting, in the first instance, all litigations to a summary and natural mode of trial, *before* resorting to the *trial by jury*.

In most of these works you will, however, find peculiarities, both of matter and style, and some suggestions, which you will condemn as inadmissible or inapplicable. But you will be pleased to observe, that Mr. Bentham writes no more for power than for money. The result of his labours will have no authority, unless sanctioned by the legislature. Nor, from the method which is habitual to him, will there be any difficulty in excluding parts, and modifying or adopting the residue. What he wants is the countenance of the State, so as to have a precise and practical object in view, and the certainty that his labours will not be lost — that his work will hereafter receive the consideration of the Legislature.

Feeling myself honoured by Mr. Bentham's application for this letter, and thinking that Pennsylvania might, without risk or expense, be eventually highly benefited, and have the honour to take the lead in this most important general improvement, as she has already done in many of its details, and knowing your zeal for promoting all such attempts in our State, — I have embraced with pleasure the opportunity of addressing you, and of requesting you at the same time to accept the assurance of my high consideration. I have the honour to be, respectfully, Sir, your most obedient servant,

Albert Gallatin.

No. IV.

Jeremy Bentham, London, to Simon Snyder, Governor of Pennsylvania.

London, July 1814.

Sir, — In transmitting the herewith inclosed letter addressed to your Excellency by Mr. Gallatin, together with some copies of a now first printed letter of mine, addressed and sent in October 1811, to President Madison, — it will be necessary for me to accompany them with some account of the incidents that have led to this my respectful address. From a common friend of Mr. Gallatin's and mine, I understood, not long ago, that for some time past he had been expressing a desire to see me. I accordingly called upon him at his then residence in Orchard Street. Thinking the opportunity a favourable one, for learning whether my above-mentioned letter to the President, a printed copy of which is here inclosed, had come to hand, — I went with the MS. brouillon of it in my pocket. I was received with the most unequivocal tokens of that favourable opinion which is so gratifying to me, and of which that letter of his to you contains the expression. I found him almost at the very moment of his then

* May 30th, 1817. Unfortunately, neither the publications here mentioned, nor any other communication of later date from Mr. Madison, nor any ulterior information respecting them or any of them, have as yet come to hand.

expected departure from this country. Under these circumstances, in the course of a conversation carried on on both sides with the necessary rapidity, I took out of my pocket the MS. above mentioned, speaking of it as a thing which, had time permitted, it *had* been my wish to have submitted to his perusal. Understanding the drift of it, he insisted upon my leaving it: and a plan of future intercourse on the subject, adapted to the various contingencies to which his own local situation stood for some time exposed, was settled between us. I had the scarce expected pleasure of seeing him two or three times after *that*, though no more than once only for any continuance. He was, I believe already gone, when this of his to you was delivered to me: so that, had it been my wish, — though I know not why it should have been, — to have seen it in any manner altered, whether by omission, addition, or substitution, it has not been in my power. In this account of it is implied the circumstance of its having been sent to me open. To this circumstance I owe the faculty of submitting to you some of the following explanations.

I found him well acquainted — not only with those two works of mine, which he spoke of as having been edited in French by my friend Mr. Dumont — the first at Paris anno 1802, the other in London anno 1811, — but with a preceding one in English, edited in my own name by the title of *An Introduction to the Principles of Morals and Legislation*, London 1789; which was the forerunner, and, as far as it extended, formed the basis, of the earliest and most extensive of the two in French. Being in English, I regret that, on the present occasion, it is altogether out of my power to find a copy to present to you: it having for many years been out of print. About five-and-twenty years ago (he said) it was put into his hands by Colonel Burr: and from that time (he was pleased to say) he considered himself as my pupil.

It was in October 1811, as above, that my letter addressed to the President was dispatched out of my hands. It went, accompanied with two recommendatory letters, from a person of eminence here, to two persons of very high eminence in the United States, with whom he was well and personally acquainted. From that time to this, no tidings of it have ever reached me. At the time of its going out of my hands, being at a distance from London, several circumstances concurred in preventing me from being precisely informed of the details of its transmission. Supposing it received, various circumstances presented themselves as capable of warranting the President in leaving it unnoticed. Mr. Gallatin, however, could not bring himself to believe that, being thus unnoticed, it could have been received.

The President of the Union being the person addressed, an observation of Mr. Gallatin was — that it belonged not to a person in that office to *originate* so much as a single law, relative to the *internal* concerns of any one of the United States. My answer was — that that circumstance was completely in my view: but that, on a subject of that nature and importance, in the character of an instrument of *communication*, to any proper person in any one of those States, the highest of all persons comprised in the Union might serve, at any rate, as well as any other person: and if so it were, that in the number of those States there were any one or more, to which the proposition were regarded as capable of being of use, no one person could, in respect of situation, be more likely — few equally likely — to be informed who they were: and that what, in my obscurity, it had fallen in my way to hear, of the character of the person by whom that office was at that time filled, could not but plead in favour of that choice.

Had the opportunity, which has produced to your Excellency the trouble of this address, fallen in my way at the time of writing that letter, it would, of course, have been to *The Governor of Pennsylvania* that it would have been addressed, and not to *The President of the United States*.

In that case, in several points of form, as determined by the difference between the two official situations, it would have, of course, been different: but in substance, the difference, if any, would have been so inconsiderable, that, to save the eventual waste of more labour, — in addition to that which, hitherto with so little fruit, has already been expended, — I have, with the concurrence of Mr. Gallatin, taken the liberty to send it to you under its original address.

While thus sitting at the feet of my Gamaliel, in a few minutes I saw before me, a map of the whole Union: of three compartments, one seemed to present rather an inviting prospect; another, but a faint one; a third, none at all. In the foreground stood *Pennsylvania*, placed there for specific reasons: in addition to such as are of a *permanent* nature, I beheld two *temporary* ones: one derived from the character of *the present Governor*, of which, at the same time (if I do not misrecollect,) he stated his conceptions as derived rather from general reputation than from personal intercourse; the other, from the circumstance of his (Mr. Gallatin's) having, when a member of the legislature of that State, had the satisfaction of seeing an individual (*Judge Wilson*, by birth and education a Scotchman, in consequence of *his* recommendation, both as to the *measure* and as to the *person*) appointed, for the very service here in question: to which *satisfaction*

was added the *expectation* of finding, that,—although, on *that* occasion, the performance of the service was prevented, by the death of the person, by whom it was to have been performed, — yet the sense of the *utility* of it remains unchanged; and the *hope*, that upon his return (which he spoke of as probably not far distant) to his residence in that State, the considerations, which he should have to present on that subject, to the minds of his fellow-citizens, would prove not to have been deprived of any part of their efficiency by any intervening incidents.

Inclosed is that letter of Mr. Gallatin to myself, by which this of his to you was announced and accompanied. From him I have no authority for making any such communication: since the time of my receiving it, I have neither seen nor heard from him. Yet, in making it, I can not charge myself with any such imputation as that of breach of confidence. Of a transaction, of which the welfare of mankind in general, and of your State, Sir, in particular, is so manifestly the object, and the sole object, — (unless any personal satisfaction, derivable from the contemplation of the eventual success of the proffered labour, be worth considering as a distinct object) — an object, the pursuit of which is so perfectly and manifestly free from all mixture of what is commonly understood by *personal* interest, and, at any rate, from everything included under the denomination of *sinister interest*, — of such a transaction it seems to me, that the circumstances can not be too particularly, distinctly, and extensively open to view: and as to the obscure individual himself, who thus has the honour of addressing you, — of the favourable opinion thus testified to be entertained of him by such a man, should a proportionable measure of public regard be the eventual, as it can not but be regarded as a natural consequence, — you will judge, Sir, whether, from an advantage of this sort, accruing to an individual, any just reason can be deduced, for depriving the public at large, — and that portion of it in particular, over which you preside, — of any benefit of which, the contemplation of such an end, pursued by such means, may naturally be productive.

In the too short intercourse, which it has been my lot to hold with that illustrious citizen of your State, and servant of your confederacy, there was not a single word, to which on his own account, in respect of present honour, as well as, on the account of mankind at large in respect of eventual profit in all imaginable shapes, it would not have been a satisfaction to me to see every degree of publicity given, of which human language is susceptible: there was not a word, the publication of which could be unto me, on my own particular account, a source of regret. In regard to an event, the importance of which, supposing it to take place, will be of such conspicuous magnitude, scarcely can even the present, much less can any future generation, be altogether incurious to know the origin: and surely, for such a work, a purer origin could not so much as be *wished*.

In relation to my letter to the President, — after such apologies as his politeness suggested, Mr. Gallatin (it being agreed between us that it should be printed) favoured me with two pieces of advice: observing at the same time, that he had read the letter over but once, and that his wish and intention had been, before he gave, to that or any other effect, any *definitive* advice, to read it over a second time: unfortunately, for any joint consideration of the subject between us, no such time could be found. At that same meeting, to express my determination to make my utmost profit of an advice, of the value of which I was so fully sensible, was all that the time allowed of.

Of these two recommendations, one was of a general cast, embracing all that part, in which, in considering what observations might be likely to present themselves in the character of objections to the whole proposal, I brought to view, in company with my answers, that which regards the circumstance of my being *a foreigner*. What was said in relation to *that* topic, had presented itself to his view (he said) as superfluous: in *the United States* — in *Pennsylvania*, at least — that circumstance, he thought, would not be likely to present itself *of itself*, in the character of *an objection:* and that it was better not to *raise up* phantoms, which would not have appeared of themselves, and in regard to which, when once raised up, there was more danger of thus raising up, or furnishing arms to those who disapproved of the design, than assurance of their being *laid* by those who approved of it.

In relation to this suggestion, — penetrated with that respect for the authority of my adviser, which everything that I had ever seen or heard of him contributed so strongly to impress, I set myself to work but now, to expunge all such passages as it should appear to me that he had in view. But, when it came to the point, I found all that related to that circumstance, — considered as likely to be brought forward in the character of an objection, — so intimately, and, as to me it seemed, inextricably, interwoven with other matter, which, consistently with the requisite explanation, could not, without considerable disadvantage, as it appeared to me, be left out, — that I determined to let it stand untouched. How the separation could be made, I saw not, without taking a considerable part of the whole, and writing it anew. And for this task, destitute of that information, as well as encouragement, which his

presence would have afforded me, — loaded too as I found myself with a variety of occupations, and with the additional weight of almost three years, which since the writing of it have elapsed, — my courage failed me.

But if you, Sir, who on various accounts cannot but be still better qualified for determining what is best to be done — what it would be advisable to expunge, and what to leave — if you, Sir, — on the supposition of the proposal's appearing to be, on public grounds, worth the labour, — would be pleased to take in hand, at this my humble request, and apply, the censorial sponge, — be assured of my grateful sense of the honour done me, as well as of my cheerful acquiescence.

In his letter to yourself, Sir, speaking of my works, "In most of them," Mr. Gallatin, I observe, says, "you will find peculiarities both of matter and style, and some suggestions which you will condemn as inadmissible or inapplicable."

In the letter that accompanied it to myself, he moreover says, — "Permit me to suggest, with respect to your intended labours for Pennsylvania, that she stands in much greater need of a system of civil or non-penal law than of a penal code, which is already much improved, and naturally daily improving. In the other branch, I include procedure, and even organization of courts, as well as *substantive* law:" (these terms, *non-penal* and *substantive*, the necessity of the case obliged him to take from me:) "and there" (continues he) "lies the great difficulty, both intrinsic and artificial."

Concerning the peculiarities above alluded to, at this distance from your State, my position has not enabled me to form so much as the slightest conjecture: and, most unhappily for me, from my Mentor, from whom I could have learnt everything, time admitted not of my learning anything.

On this subject, — on which, had time admitted, I might, with the greatest ease, have poured out my whole mind to *him*, — I am thus reduced to the necessity of addressing myself to *you*, Sir, at the risk of being found troublesome.

Notwithstanding what you have seen above, I cannot but flatter myself, Sir, with the hope, that you will agree with me in the opinion, that, for reaping the greatest profit from whatsoever service it may be in my power to render, the most promising course you can take is, to leave me as *free* as possible: — free, and not only in respect of the *manner* of treating each part of the subject, but also in respect of the *priority* as between part and part: — free, not only in respect of *matter*, but in respect of *form*: — free, not only in respect of absence of *restraint*, but in respect of absence of *constraint*: — "free" (as the poet says) "as air," in every respect. In and by so doing, there would be no precise limits to what, in respect of the *use* capable of being made of the work, you may gain: and, — should there be any the smallest benefit, which, if left free, it might have been my good fortune to contribute to put you in possession of, — its not being as yet in the contemplation of any of you, will hardly be deemed a sufficient reason for your depriving yourselves of it. On the other hand, by any such freedom on my part, not a particle either of loss or risk will you on your part be exposed to. Yes: if in the hands of this your proffered servant, there were to exist any the least particle of *power*, — of *power*, or so much as of *influence*, — such influence alone excepted, as by such *reasons* as you will see, may come to be exercised on your minds. "*Silence!*" fellow-citizens: "*I understand better what is best for the commonwealth than you do.*" Such, with all the frankness of undisguised self-sufficiency, is the recorded speech of I forget what *Roman*, in whose instance, the consciousness of that intellectual authority, — which is the inseparable accompaniment of superior ability as demonstrated by conspicuous service, — might serve as a cloak, and in some measure as an excuse, for a degree of arrogance, from which nothing whatsoever could have afforded him, or any one, a justification. In the present case, — being as far from any propensity, as from any title or pretence, to employ any such language, — that which the individual who is now addressing you desires at your hands is — not that you *should* condemn *yourselves*, but that you should *not* condemn *him*, to silence.

If, then, on the one hand, my wish is — that, for your own sakes (for no interest can I have that is not yours,) my service, as rendered to you, should, at this *earliest* stage, be a service of perfect freedom, — at a subsequent stage, you may depend upon me for a degree of obsequiousness, such as will be more likely to exceed your expectations, than to fall short of your wishes. Freedom at the one stage, obsequiousness at the other, — both are the result of one and the same principle, so far as sincerity admits. My intellectual faculties, such as they are, are altogether at your service: but such, to any good purpose, they cannot be, any further than as they are free. *Will*, so far as you are concerned, I have none. To yours, in the execution of this my supposed office, I will accordingly pay the most unreserved — a more than passive — an unreservedly active obedience.

Explanation is here necessary. Most assuredly, to a considerable extent — it is impossible for me to say to how great an extent — what I find to propose to you will appear erroneous. Again, for the most part, what has thus presented itself to you as erroneous, you

will *yourselves* find no difficulty in correcting — in finding for the amendment of it (whatsoever be the mode of amendment — omission, insertion, or substitution) — such entire provisions of detail, as well as such words, as, in your own judgment, will be apt and sufficient for the purpose. But, — should it be the good fortune of my proposed work, in the general complexion of it, to prove acceptable to you, — a case that may also happen is — that, on the occasion of this or that correction, for this or that reason, it may be your inclination to *remit* the subject to me; to the end that, in respect of the necessary details, I may propose such particular words, or even such particular expedients, as may seem to me to be best adapted, to the purpose of giving the most thorough effect, say to the *will*, say to the *principle*, be it what it may, which, in general terms, has been expressed by you. Should the general method, and mode of expression, for example, as employed in the work, stand approved by you,—such as above, in regard to matters of detail, may, perhaps, be the course approved of by you: viz. under the apprehension, lest, if made by any other hands than those of the original draughtsman, the alteration, made in this or that part, should prove in some way or other repugnant to, inconsistent with, or detrimental to, the provision made and approved of in this or that other part. I say, if made by any *other* hand: for to myself, working according to my own method, I cannot bring myself to regard it as in any degree probable, that, in the penning of any one part, the purport of any other that has any bearing upon it should escape me: a sort and degree of command, which, at least, unless it be after a very long course of practice, it can scarcely be expected that any one man should possess, over a work so voluminous, composed by a different hand.

Well then — on the occasion of such supposed error in such my code, and thereupon for the correction of it, — or say, in the first instance, and without reference to any such code, — a certain effect — no matter what, or in which of two characters, viz. that of an *end*, or that of a *means*, presents itself to you as fit to be produced. Referring to me the choice, either of the mode of expression alone, or — matter and expression together, of the expedients — the provisions of detail — by which the effect shall be produced — you require me to perform my part towards the production of it. Of this effect, in whichever of the above two characters considered, the production (suppose) is directly repugnant and irreconcilable to that which, in my own view of the matter, is *fit* and *right*. Such being the effect, shall I, in my supposed position, refuse or decline to employ my pen towards the production of it? Not I indeed. *On one condition* — a condition which you, Sir (I speak here in the plural as well as the singular number,) will, I am sure, not refuse your subscription to — in my own view of it be the effect ever so unfit to be produced, I will not, on that account, so much as decline doing that which belongs to my supposed employment, towards the production of it.

This *condition* is neither more nor less, than the being suffered to possess and use, in this supposed *second* stage, the same liberty, which, without absolutely stipulating for it, I made my humble request for, in the above supposed *first* stage: the liberty of making known my opinion, whatsoever it may be, with the reasons on which it grounds itself. In this liberty will be included — if it be in the character of an *end* that the production of the effect in question appears to me unfit, — the bringing to view the considerations, by which, in the character of *reasons*, that opinion has been produced: if it be in the character of a *means*, — the like liberty, with the addition of that of proposing any *other means*, by which, in my view of the matter, the same end may be produced on more advantageous terms.

In a word — on this condition, by which is saved from violation that *sincerity*, — the violation of which, could not, in this my supposed situation at any rate, on any imaginable occasion, be of any the smallest use, — there is not that imaginable effect, which, in that my supposed position, I shall not at all times be ready, in the way in question, to employ my labours towards the production of. Try me — examine me — for the purpose of the experiment, set imagination to work, to paint the effect in any the most terrific colours — my answer is still the same.*

* To avoid starting, at this premature period, any subject capable of being found pregnant with doubts and differences, — for the experiment, let us take such cases, as being among the strongest that can be imagined, are thereby among those which are surest not to happen. Descending then from these elevations, we shall, by force of the argument *à fortiori*, be able, with the greater ease, to clear the ground of all such difficulties, as might otherwise have presented themselves.

We call upon you (say you) to draw up for us a law, for attaching to this or that species of offence, the punishment of the *wheel*, as employed till the other day in France — to this or that other, that of *dismemberment* by four horses, as also then and there employed: — is there that imaginable case, in which you would lend your hand to any such atrocity? Oh yes (say I,) *that* there is, and with gladness: yes, and not only so, but even advocate it, and give my vote for it, if I had one: — if, for example, by so doing, I could prevent the attaching, to those same offences, the punishment of *impalement*, still employed in the Turkish empire. In the case of the *wheel*, the torment always might be, and commonly was — in the case of the *dismemberment*, it always was — at an end in a very few minutes: in the other, it frequently lasts for days. Yet, in my own

Taking this course, in this way (it seems to me,) and in no other, can a man, in my supposed position, steer clear of two opposite errors: — *over-scrupulosity*, and *insincerity*.

Take the case of the over-scrupulous man. In his judgment the measure given to him to shape is, to a certain *degree*, an unfit one. What follows? He turns his back upon it, declaring that he will have nothing to do with it. Of ill-humour, thus expressed, a merit is commonly, at the same time, made. Such is his purity, nothing will he have to do with evil in any shape. Nothing to do with *evil?* — then nothing will he have to do with *government*. For what is government but *a choice of evils?* Government operates not but by coercion: coercion can not be produced but by punishment. Coercion — punishment — are they not evils? if they are not, then what else is? Employed to produce a more than equivalent good, or to exclude a greater evil, does *an evil* change its nature? No more than a sum of money does, by being carried to the one or to the other side of an account.

Most completely incompatible would any such scrupulosity be, with the performance of the sort of service for which I am thus offering myself. For, if, after having been in the first instance presented by me, my proposed Code were to be returned to me, — for me, in pursuance of certain instructions, to propose amendments to it, — how could it happen, but that, among the provisions thus required at my hands, there should be a considerable number that would, in my sight, be unfit ones? — comparatively, at least, if not absolutely *evil* ones?

The other error is *that* of *insincerity*. In any other position than my supposed one, this, of the two errors, is *that*, of which it is scarce necessary to say, that it is the one most frequently exemplified, and everywhere most likely so to be. Not only by their votes, but by their discourses, do men give their support in public to that one of two opposite measures, which in their own eyes, — as privately confessed, or otherwise demonstrated, — is least beneficial, or most pernicious. This is what, in *every* country, the man of *law*, who has a piece of gold for his fee — confessing it, for how can he deny it? — does for the *half* of his public life. This is what, in *this* country, the man of *politics* — more particularly the legislator, who, lest sincerity or probity in any shape should be possible, has an *office* for his fee — does for the *whole* of his public life. Whether in this *our* legislature such a course is necessary — consistent with utility — consistent with probity, — I stay not — I need not stay — to inquire. Sure I am — and to the present purpose this is quite sufficient — sure I am that, — in a situation such as that here in question, in the situation in which the acceptance of this my offer would place me, — no such vice would either be necessary, or of any use. In this supposed situation — such is the felicity of it — without any the least particle of insincerity, it would, on every occasion, be in a man's power to render every particle of service, which it would be in man's power to render, with the most consummate contempt for the law of sincerity. Whatsoever is required of him, *that* he does: laying before the eyes of his employers for their choice, as well that which in his own eyes is *unfit*, as that which in his own eyes is *fitting*, to be done. This being the case, in what way would his employers be the better served, — any more than his own mind and conduct be the more pure, — if — to save himself from being seen to be working in contrariety to his own opinion, — he were to misrepresent his own opinion — to give an untrue account of it — stating it as being favourable to that to which it is really adverse, — adverse to that to which it is really favourable. Here would be a *cloak* — a most costly one — and where would be the *use* of it? Yet, in the ordinary situation of a member having speech and vote in a legislative assembly, — as often as it happened to him to propose for adoption a measure, or any the least particle of a measure, which at the same time were in his eyes an unfit one, this would be his only alternative, viz. either to put on and wear a cloak of this kind, or take that course, for the liberty of taking which I am here stipulating: — viz. the preparing for expected adoption a measure, which, by his own confession, is, in his own eyes, an unfit one.

Sir, you now see — and I hope in a pretty strong light — one of the effects — a happy one, I think, you will acknowledge it to be — of the position in which, with reference to you, I should stand. Obsequiousness, — of the sort, and in the degree here in question, — to carry it to the length above described, would, in this my supposed position, cost a man much less, working for you at your distance, and such as you are, than it would to carry it to any thing like an equal length, working for government here. Working for you, he would be working for a master who has not so much as a penny — no, not so much as a ribbon to give. Doing any such work here, he could not work but under a master who has pence to give in abundance: — pence, which men in abundance are at all times so ready to earn — to earn at any price. At the same time, — even in favour of the particular — the personal interest — of this master, — even an honest man's judgment could not but lead him to do many things; the necessity of such his situation many more. So many

mind, I am against the employing death as a punishment in any case.

of these things as he should thus have been doing, so many are the occasions on which lips there would be — lips not a few — to open and cry aloud — *All this is for the pence!* But, between you and me, Sir, not a penny can be so much as supposed to pass. For the like reason, even among yourselves, working under you, one of *yourselves* could not be so free, — so free, I mean from all suspicion, from all danger of disrespect on the score of obsequiousness, — as I should be. Why? Because, for one of yourselves (not to speak of *power*, still less of *ribbons*,) thriftily and wisely as your pence are distributed — you, even you, have always *pence*.

Sir, it is to a feast that I am thus bidding you. Join hands with me, you and I will govern the world. Sir, I will show you how we will govern it. Independently of the *reasons* on which it is grounded, and by the contemplation of which it has been produced, — my own opinion not being, even in its own estimation, worth anything, never do I declare it (you understand the sort of occasion of which I am speaking) without declaring at the same time these *reasons*. If, then, you have a code from me, the code you thus have, will be one that is a code accompanied with *reasons*. Of this code, some part, I may hope — hope without much overweeningness — some part, however small — will be sanctioned by your concurrence. Here, then, will be, in authority as well as in existence, a code supported throughout by *reasons*. Hereupon, seeing that neither to establish, any more than to pen, a code, supported throughout by reason, is a thing impossible, government will, in this or that other state, become ashamed of giving out codes, altogether destitute of this support. But it is by the nature of things, that *reasons*, in so far as they are good ones, are made: made *they* cannot be, as laws may be and are, by any man that has *power* — by any such man at pleasure. Giving *reasons* everywhere, rulers will not, everywhere, without giving such as they would be ashamed to give, be able to give *reasons*, nor therefore to give *laws*, altogether different from *ours*: and thus, you see, our empire spreads itself. To be sure, even for the earliest of these conquests, there is one of us that must wait till he is dead. But this is no more than what he has always been prepared for: this is that, of which no man could ever be more fully aware than he is. As for you, Sir, over some of *your neighbours*, at least, *your* reign — I see not what should hinder it — may commence in your lifetime. Over Morocco, or China, or even over Russia (not to speak of the empire, with the long-winded and round-about name, called by the Greeks in one word *Holophthoria*) I dare not promise you that you will thus speedily cast forth your shoe: but, for any delay which human perversity may oppose to you in these distant regions, I flatter myself you will have made up your mind. In the meantime, the men of superior wit and wisdom all over the world, — in whose nomenclature *utility* and *mischievousness* are synonymous terms, and to whom the idea of any increase to human comfort would, but for the matter it affords for derision, be an afflicting one, — will make their sport of us: and even this effect, so far as it goes, even this effect, taken by itself, will, in my estimation at least, be a good one.

As on the one hand, if the observations above submitted be just, in instructions of the *obligatory* kind you cannot, in the first instance, be too sparing, — so, on the other hand, in instructions of the *informative* kind, you cannot be too liberal. For keeping my *will* in the right path, nothing can be wanting to me: for to *you*, Sir (I speak in the plural number) a *will* such as mine is nothing. For proving and keeping my *understanding* in the right path, I have no less *wish* than *need* for everything that you can give me. Information I mean, as correct and complete as can be given, on the subject of all those circumstances, by which your country is distinguished from that in which I write, and thence the mind of the people of your country stands distinguished from that which is the most familiar to me: and, as to documents, — besides those, if any, which, though in existence, never having been as yet made public, are consequently not only out of my power, but even out of my knowledge, — those which, though published in America, not being as yet published in this country, would, all of them, be, for some time, out of my power to obtain, and, with few exceptions, are as yet out of my knowledge.*

On this subject, besides the above *general* requests, I have two or three *particular* ones to trouble you with. *One* is — that whatsoever parts of the mass of information are purchasable, may be set down to my account, whereupon, as soon as received, the whole amount shall be promptly and thankfully repaid; and that, in case of acceptance, the transmission of the letter informing me of it may not be made to wait a *moment*, — or, to speak more pertinently, a *ship*, — for the collecting of any part of this documentary mass.

The case is — that at my age, and with my *constitution*, there is no time to lose. Memory, and capacity for *dispatch*, have already, I perceive, undergone considerable enfeeblement: and the state of my *eyes* is already such as forbids the using them for any pur-

* Forms of conveyance — such as are most in use, — and forms of judicial procedure in every sort of judicatory, — would be particularly useful, not to say necessary, to me; of these, a considerable part at least, must (I should suppose) be in print.

pose of entertainment — for any sort or quantity of *reading*, beyond what is necessary for the purpose of what *I write*. If whatever aptitude for the task in other respects I may be thought to possess, were already, or threatened to be, in any similar degree diminished, — no such offer as the present would have escaped from me. But, by every day, during which, without sickness, life may be continued to me, — as far as I or my friends can judge, — that aptitude, instead of being diminished, not only has been, but promises to be increased. Why? — because it depends upon those logical arrangements, which, being already consigned to paper, enable me, as if by an algebraic process, to discover on each occasion, so far as the *facts* that bear upon the case are known, whatsoever requires to be discovered: and, in the application of which, the more frequently and thoroughly the mind is exercised, the more perfect it is made.

For these same reasons, *another* request that I have to make is — that if, in your individual judgment, Sir, the offer should seem to possess a chance more or less considerable, of obtaining acceptance at the hands of the legislature, information to that effect may be transmitted to me by the earliest opportunity, no opportunity being suffered to be lost by waiting for the determination of the legislature.

After a declaration, the frankness of which will, I hope, stand excused by the necessity, — postponement and rejection will be the same thing. If, after having commenced, I live not to complete the service, the very last of my thoughts will be at any rate devoted to it.

From the pen of a man already far advanced in his 67th year, marks of eagerness and impatience, such as these, — impatience to be set down to a task of assiduous, and, in the ordinary sense of the word *pay*, *unpaid* labour, to the end of his small remnant of life, may perhaps provoke a smile. But I know not to what worthier object the labour of any being in human shape could be directed: and, — being, with or without sufficient grounds, impressed with the hope of my having, by the already bestowed labour of near half a century, rendered myself better qualified than a man unexercised, or even a man much less exercised, in the same time, is likely to be, for rendering to a political state, and thence to mankind at large, service, intellectual and moral, in this its most important of all simply human shapes, — it would be but an ill conclusion of such a course of labour, to leave untried or undone, anything that promised to contribute, in any degree, to the accomplishment of the object of it.

Penetrated with that respect, which your eminent situation, and the reports that have reached me of your conduct in that situation, could not fail to inspire, I have the honour to subscribe myself, Sir, your faithful, though as yet unbidden servant,

JEREMY BENTHAM.

No. V.

Simon Snyder, Governor of Pennsylvania, to David Meade Randolph, Esq. Williamsburgh, Virginia, on the Subject of the above Letter of Jeremy Bentham.

Pennsylvania, Harrisburg,
31st May 1816.

SIR, — I have to acknowledge the receipt of a letter which you did me the honour to write, and which came to hand a few days since. The books to which it refers I received in the winter of 1814-15 by the mail-stage, but unaccompanied by any letter or memorandum, explaining the object of their transmission; nor could I discover from the envelope, which was torn and much defaced, from whom or from whence they came. From the necessarily consequent state of incertitude I was not relieved until this last month, when I received a letter from Mr. Jeremy Bentham, written at Queen-Square-Place, Westminster, and dated 14th July 1814, in an envelope, post-marked Philadelphia, 6th April last past; which informed me that I was indebted for the books to that distinguished philanthropist, and which fully explained the object of the transmission. The same envelope contained also a letter from Mr. Gallatin to me, and another from him to Mr. Bentham, both dated in July 1814.

I have not in my view any ordinary occurrence that could have delayed the delivery of these letters so long a period after the receipt of the books to which they relate: — Mr. Charles Mifflin, who, as it appears from your letter, transmitted the books from Philadelphia, can probably explain to you or Mr. Bentham the cause of detention. If the letters had arrived previously to the 19th March last, on which day the legislature of this state adjourned, an early exhibition to that body (comprising much useful talent, and many of its members having been long labouring to reform our jurisprudence) of his proposition, and of which I should promptly have availed myself, I am confident would have resulted in measures more commensurate with the object of furnishing him with information to aid, and better adapted to further his generous intentions towards Pennsylvania, than what is in my power to furnish: which can only consist in a transmission to him, by any conveyance that yourself or Mr. Mifflin will advise, of a copy of the laws of Pennsylvania, from the origin of the government to the present day, and journals of

legislative proceedings, so far as in print; — these latter contain (though rather diffuse) as well a correct general history of Pennsylvania legislation, as of the origin and progress of improvement from time to time in our jurisprudence: — also a copy of a Report by Jared Ingersoll, Esq. attorney-general, on criminal law, and a bill predicated thereon, consolidating and amendatory of our present code, but not yet finally adopted by the legislature. On the subject of fundamental law, a copy of the Minutes of the Proceedings of the Convention, which framed the present constitution of Pennsylvania, shall also be furnished: likewise (if to be found in print) the Minutes of the Convention that framed the constitution of 1776, and those of the council of censors, who acted under the authority of that instrument, — to which I will add such other publications as may appear useful.

Dallas's and Binney's Reports of Adjudications by the highest judicial tribunal in the State, I presume will be essential; these are not for sale here, but can be procured by his agent at Philadelphia.

Aided by these muniments and publications, Mr. Bentham will be enabled, by his talent and research, to mature and shape his system for submission officially to the legislature.* I prefer this course, for the obvious reason, that executive suggestion proves not always a recommendation for the adoption, by a free legislature, of the best digested, and speculatively most approved, propositions; — such are more frequently, perhaps sometimes unfortunately, passed over with silence, than acted upon by practical men, who, though the representatives of a practically virtuous people, yet differ as widely about the means for effectuating the melioration of the condition of man, as differ their local situations, their pursuits, and consequent feelings and opinions.

That the result of the labours of his life, on the all-interesting subject of his letter, should be presented for consideration here, untrammelled by any suggestions and prescriptions of another, will be, I am persuaded, more acceptable to the legislature, and more gratifying to the philanthropic Mr. Bentham: and if eventually I shall be the medium of communication, to give purely the emanations of his own mind, will relieve me from a sacrifice of feeling which I should be compelled to make, if his system had acquired the slightest feature from a hand so incompetent as is my own.

Be pleased, Sir, to make known to Mr. Bentham the contents of this letter, together with my sincere wishes for his personal happiness, and for the prolongation of his useful life.

For yourself, Sir, please accept assurance of regard. SIMON SNYDER.

* *May 30th*, 1817. — Unfortunately, neither the above-mentioned, nor any others from the respectable quarter in question, except the printed paper, from which an extract is given in [No. VI.] have as yet come to hand. — J. B.

No. VI.

Extract from a printed Paper, signed Simon Snyder, dated Harrisburg, December 5th 1816, *James Peacock, printer, intituled "Governor's Message to the Senate and House of Representatives of the Commonwealth of Pennsylvania," containing seven pages. It came inclosed in a Letter from the said Governor to David Meade Randolph, Esq., Williamsburgh, Virginia, and by him was transmitted in a Letter dated from thence* 18*th Jan.* 1817, *and addressed to Jeremy Bentham, Esq. Queen-Square Place, Westminster, London, by whom it was received* 29*th March* 1817.

It commences with the words, FELLOW CITIZENS, &c.

In page 4, is a paragraph in the words following, viz.: —

"This occasion is embraced to submit to the legislature a communication made to the Governor by Jeremy Bentham, of London, on the subject of public law; which, though dated 14th July 1814, was not received until after the adjournment of the last legislature. As this philanthropic communication arose out of suggestions of our esteemed fellow-citizen Albert Gallatin, his letter to the Governor and Mr. Bentham's are herewith submitted, and also a letter from the Governor, and other papers connected with this highly interesting subject. The legislature will determine whether, under the circumstances of our as yet unconsolidated system of civil and criminal polity, we can, in the prosecution of this important work, be benefited by the labours of the benevolent Mr. Bentham."

No. VII.

CIRCULAR. — *To the Governor of the State of*

Queen-Square Place, Westminster, London, June 1817.

SIR, — On the subject of Codification, an offer of mine, in the design of which, the State, over the councils of which your Excellency presides, was included, may be seen in a letter which I took the liberty to address to Mr. *Madison*, in his then character of President of your United States: — of this letter a copy, as exhibited in and by No. I. of the accompanying set of printed documents,

solicits the honour of your acceptance, in the view of its being submitted to the competent authority in your State. No. II. is a copy of the answer received by me from Mr. *Madison*. No. III. is a copy of a letter, addressed, by Mr. *Gallatin*, at that time Minister Plenipotentiary from your Union to this Court, to Mr. *Snyder*, then *Governor of Pennsylvania*, recommending to his notice the one which follows. No. [V.] is the copy of a letter written by Mr. *Snyder* on the subject of it. In No. [VI.] being an extract of a *Message* delivered by his Excellency to the *Legislative Body* of his State, may be seen the notice which on that occasion he was pleased to take of it.

In the view taken of the subject by Mr. Madison, it happened not to be competent to the high situation at that time filled by him, to give to the offer in question the advantage of his sanction in any of the forms, which, for want of a sufficient acquaintance with the constitution of the United States, I had taken the liberty of submitting to his choice. Nevertheless, after so substantial an approbation as has been bestowed upon the offer in question, not only by those other distinguished citizens of your United Commonwealth, but by your late President himself, to wit, in and by the very letter in which he declined making, in a direct way, the proposed communication of it — I hereby take the liberty of submitting to your notice that same offer, as described in the accompanying letter to Mr. Madison, now printed for that purpose: and, forasmuch as of the twenty different States of which your Union is composed, if the offer in question has any claim to regard in any one, so has it in every other — hence the universality of the currency, which it has been my endeavour to give to it, and hence accordingly the word *circular*, by which an intimation of that endeavour is conveyed.

As to the nature of the communication, — though it is not in the number of those which come every day to be made and received in the ordinary course of public business, yet if in your judgment any prospect of useful service to the State, over the councils of which you preside, shall appear to be afforded by it, the circumstance of its singularity will not of itself, I am confident, operate as a bar to any such attention as, in consideration of the importance of the subject, it might otherwise be deemed proper to bestow upon it.

Having of late the good fortune to be not altogether unknown to Mr. Adams, at that time Minister Plenipotentiary from your Union to this Court, and at present your Congressional Secretary of State, who has moreover done me the honour to take charge of all the several papers above-mentioned, for the purpose of facilitating the transmitting of them to their respective destinations, — I take the liberty of mentioning that gentleman as being neither unable, nor I dare flatter myself unwilling, to afford, in relation to the person thus addressing you, any satisfaction that may happen to be desired.

On the occasion of the offer thus made, of the outline of a complete body of law for the use of any political state, as a work, which, though the foundations of it have so long ago been laid, remains yet to be completed, — it is matter of no small regret to me, that a correspondent number of copies, of a work containing a very considerable sample of the work now proposed to be executed, cannot accompany this address: I mean the work intituled, *Traités de Legislation Civile et Penale, &c.* in three vols., 8vo., Paris, 1802. The case is — that, though got up from some unfinished papers of mine, written in this my own language, (the fundamental principles of it, so far as concerns the *penal* branch, having moreover been laid down in my *Introduction to the Principles of Morals and Legislation*, published so long ago as the year 1789, but for this long time out of print) yet no translation of that work into this same language has ever yet been published: and that, of the 3000 copies which at the time (anno 1802) were printed at one impression, none (it is believed) are now to be found on sale in this country, nor by this time probably at Paris, where it was printed: and, by one cause or other, equally out of my reach have been placed two other works published in French, in like manner, from my unfinished papers, by my above-mentioned friend, viz., *Théorie des Peines et des Récompenses, &c.*, and *Essai sur la Tactique des Assemblées Politiques.* Thus it happens, that so far as concerns the penal and civil branches of law, the only documentary evidence herewith transmissible, from which any conception of the work now proffered can be formed, is the testimonial evidence, composed of the letters hereto subjoined, together with the several official testimonies, spoken of or alluded to, in my above-mentioned and hereto also subjoined Letter to President Madison, and a Letter of mine to the Emperor of Russia, which, with his Imperial Majesty's answer and my reply, is also designed to accompany this address. It is my ambition to approve myself, Sir, yours and your country's diligent and faithful servant, JEREMY BENTHAM.

No. VIII.

Jeremy Bentham, an Englishman, to the Citizens of the several American United States.

London, Queen-Square Place,
Westminster, July 1817.

LETTER I.

Testimonials as to this Proposal, and its Author.

FRIENDS AND FELLOW-MEN, — Ere this reaches you, you may have seen, many of you, what, some years since, I wrote to the then *President* of your United States; — if so, you will have seen what in return was written by that chief functionary of yours to me. You will have seen the sort of service which it was and is my wish to render to you. You will have seen whether, in the opinion of your late *President Madison* — you will have seen whether, in the opinion of your late Secretary of the Treasury, *Albert Gallatin* — you will have seen whether, in the opinion of the Governor of Pennsylvania, *Simon Snyder* — the service itself promised and promises to be a useful one; and how far he who thus addresses you has been regarded as qualified for the rendering it. The tract, in which *those* Letters are inserted at length, being too bulky to admit of the sort of circulation hoped to be given to *these*, — short extracts from them are here subjoined.* The title of it is "*Papers relative to Codification and Public Instruction*," &c. Copies of it, together with copies of a circular address from me, are on their way to the respective Governors of your States.

You may, I doubt not, learn at any time, by asking him (though never have I asked him,) what your present *Secretary of State*, late Minister Plenipotentiary in this country at this Court, *John Quincy Adams*, has seen, and heard, and knows, and thinks of me.

Thus much as to authority — intellectual authority: source of the influence of understanding on understanding: intellectual authority, sole and indispensable foundation for a *derivative* judgment: — the only sort of judgment capable of being pronounced by any man, in so far as the materials necessary for a *self-formed* judgment fail of lying within

* (EXTRACTS.)

I. *President Madison to Jeremy Bentham. Washington, May 8th* 1816.

.... "The very distinguished character you have established with the world, by the inestimable gifts which your pen has made to it."...

"That a digest of our laws on sound principles, with a purgation and reduction to a text of the unwritten part of them, would be an invaluable improvement, cannot be questioned: and I cheerfully accede to the opinion of Mr. *Brougham*, that the task could be undertaken by no hand in Europe so capable as yours."

II. *Albert Gallatin, then Minister Plenipotentiary from the American United States, for the signature of the treaty of Peace between that Commonwealth and the Kingdom of Great Britain and Ireland, to Simon Snyder, Governor of Pennsylvania. London, 18th June* 1814.

"Mr. Jeremy Bentham intends to address you, for the purpose of making a gratuitous tender of his faculties and services, in preparing a system of civil and penal law for the subsequent inspection and revision of the legislature of Pennsylvania.... So far as it is practicable, Mr. Bentham having devoted near forty years to the investigation of the subject, from his rare talent of analysis and classification, appears particularly fitted for the undertaking. I have ventured to say so much, because those of his works which have appeared in the most popular dress have been published in the French language. I allude to his 'Treatises on Legislation,' and to his 'Theory of Rewards and Punishments,' edited by Mr. Dumont, and respectively published in the years 1802 and 1811. These works are generally considered as the best of the age on the subjects of which they treat. Had not other avocations prevented, *I would have translated the shortest.*"

III. *Simon Snyder, Governor of Pennsylvania, to David Meade Randolph, Williamsburgh, Virginia, written on the subject of the above Letter, and designed for transmission to Jeremy Bentham. Harrisburg, 30th May* 1816.

"If the letters had arrived previously to the 19th March last, on which day the legislature of this state adjourned, an early exhibition to that body..... of his proposition, and of which I should promptly have availed myself, I am confident would have resulted in measures more commensurate with the object of furnishing him with information to aid, and better adapted to further his generous intentions towards Pennsylvania than what is in my power to furnish..... Aided by these muniments and publications, Mr. Bentham will be enabled, by his talent and research, to mature and shape his system for submission officially to the legislature." — N. B. Unfortunately none of the above papers have come to hand.

IV. "*Governor's Message to the Senate and House of Representatives of the Commonwealth of Pennsylvania. Harrisburg, December 8th* 1816. *James Peacock, printer.*"

Page 4. "This occasion is embraced to submit to the legislature a communication made to the governor by Mr. Jeremy Bentham of London, on the subject of public law; which, though dated 14th July 1814, was not received until after the adjournment of the last legislature. As this philanthropic communication arose out of suggestions of our esteemed fellow-citizen, Albert Gallatin, his letter to the governor, and Mr. Bentham's, are herewith submitted, and also a letter from the governor, and other papers connected with this highly interesting subject. The legislature will determine whether, under the circumstances of our as yet unconsolidated systems of civil and criminal polity, we can, in the prosecution of this important work, be benefited by the labours of the benevolent Mr. Bentham."

his reach. In the above-mentioned letters, you will have seen a set of *testimonials*—evidences as pure from all alloy of sinister interest, or even personal and partial favour, as it is possible for testimonials to be—evidences, the value of which no detraction can diminish, no exaggeration increase.

While these letters to you are penning, comes from another quarter a sort of testimonial, capable of being regarded by your representatives in the character of a *precedent*.

As the quondam metropolis and focus of religious liberty, and the still remaining receptacle of whatsoever comes nearest to pure representative democracy on any other part of the globe besides yours, the State of *Geneva* cannot be unknown to you. The intelligence I have to communicate to you from thence is this:—For the drawing up of a penal code, grounded on the principles of a work of mine, as published in French, in the year 1802, by my friend, *Stephen Dumont*, citizen of that commonwealth—a commission has just been given to him: whensoever finished, it is to be printed for the use of the constituted authorities, to whom it belongs, to deal with it in the character of a body of proposed law, as, under the name of *Bills*, works the same in *kind*, differing only in *extent*, are dealt with in this country, and, I suppose, in yours.

Here, then, is a precedent already set: a precedent which,—if without the praise, at any rate without the reproach of originality,—it belongs to your representatives, if it seem good in their eyes—to your representatives, with or without an impulse from you their constituents—to take into consideration and put to use.

In a private letter, dated from Geneva, 17th June 1817, and addressed to the man so well known to you as the oldest and most efficient friend to mankind among English practising lawyers—I mean *Sir Samuel Romilly*—after speaking of his having received from the constituted authorities a commission as above, *Pierre Etienne Louis Dumont*,—more commonly known by the shorter signature, *Etienne* (in English, Stephen) *Dumont*,—in words, of which the following is a close translation, proceeds thus:—"*Bentham's* plan is the basis of my work. I pursue his method in respect of the division into *General Titles* and *Particular Titles*. In regard to *offences*, I adopt the whole of his classification: and more especially the great and beautiful idea, of proceeding in a uniform manner, by commencing with the *definition* of the offence, and following it by an *exposition* of the leading terms of which the definition is composed; then, by a statement of the grounds or causes of *aggravation*, and those of *extenuation*, applying to each genus or species of offence. This plan, which is altogether new, has a prodigious advantage over every other: viz. that of affording, in a pre-eminent degree, every possible facility to improvement, in every part of the details. In truth, this code will rather be a set of authentic *instructions* for the judges, than a collection of peremptory ordinances. A greater latitude of discretion will be left to them than was ever left by any code: yet their path being everywhere chalked out for them, as it were between two parallel lines, no power that can be called *arbitrary* is left to them in any part of it.

"In the code itself they will behold all the *considerations* capable of affording proper *grounds* for their decision: and, on each occasion, it is to the *text of the law* that, in justification of such application as, on that occasion, they think fit to make of those same grounds, they will all along make reference: for example, the several grounds of *aggravation* and *extenuation*, respectively above alluded to, on the occasion of their being brought to view, for the purpose of justifying such fixations as shall come to be made of the quantity of the punishment."* Thus far Dumont.

To the acceptance of an offer such as the present from a foreign hand, various are the objections that will be apt to present themselves: in my first letter to Mr Madison, all those have been met, and will, I flatter myself, be found removed: advantage, and without inconvenience, will be seen to be the ultimate result,—of a circumstance which, at first sight, may be so apt to appear objectionable.

Of this letter, together with the paper containing those others of which you have just seen extracts, your Secretary of State, *John Quincy Adams*, has done me the honour to take charge, for the purpose of its being transmitted to the Governor of your State.

Such are the testimonies submitted to you for the present, in the character of *grounds*, on which to form a *derivative* judgment. Now, then, my friends, such of you as, on this subject,—from such considerations as are capable of being compressed within the compass of a sheet or two of letter-press,—regard yourselves as possessing the means of framing a *self-formed* judgment,—hear me. Hear an Englishman, whose mind, by the view and prospect of the state of government in this seat of ill-disguised despotism and self-acknowledged corruption, would be sunk in despondency, but for the ray of comfort which beams upon him from your happier clime:—from your incorruptible—your every day more and more flourishing commonwealth: from your government—the only one that now exists, or ever did exist, on the surface

* Vide "P.S. 26th August 1817," at the end of Letter VIII.—*Ed.*

of the globe, in and by which the advancement of the *universal interest*, in preference to all *particular* and narrower interests, is or ever was the end pursued: pursued? — yes: or in any distinct and unequivocal terms, so much as professed to be pursued.

LETTER II.

Properties desirable in a Body of Laws, for all Purposes.

Hear, then, from me, in the first place, the *properties* or *qualities* which, — ere it can fulfil the *purposes* for which in your country laws are, as in every country they ought to be, made, — a body of laws, designed for all purposes without exception, must be possessed of: properties which, accordingly, in a work of this kind, may be stated as being *desirable*. 1. *Notoriety*, or rather aptitude for *notoriety*, in respect of its contents; 2. *Conciseness;* 3. *Clearness* in respect of its language; 4. *Compactness* in respect of its form; 5. *Completeness*, or say *all-comprehensiveness*, in respect of its extent; 6. *Intrinsic usefulness* in respect of its character; 7. *Justifiedness*, i. e. *manifested usefulness*, in respect of the body of *instruction*, by which, in the form of *principles* and *reasons*, it ought to be illustrated, justified, recommended, and supported.

In regard to all these several *properties*, as they come to be explained, you will have to consider — how far, in their present state the body of the laws, under which you live, is from being possessed of them — possessed of them respectively, in a degree approaching to that which is indisputably desirable, and affords a promise of being practicable. You will at the same time be able to form some sort of conception — not only of my anxiety to give to it the benefit of them all without exception, but, in some general way, of the *resources* to which I look for the accomplishment of so desirable a result: resources, by the contemplation of which has been produced that sort of conjectural confidence, which you have seen reposed in me by so many of the distinguished men, who are at once so happily possessed, and by general acknowledgment so highly deserving, of your more decided and unrestricted confidence.

Of these *seven* properties, *three*, viz. *clearness*, *conciseness*, and *completeness* — all of them qualities intimately connected with one another — will naturally present themselves as being desirable in a literary work of almost any sort: properties, the demand for which is at any rate not peculiar to a body of law; and of which, on that account, no particular mention need here be made. In regard to *completeness*, however, so peculiar will the import as well as importance of this word be seen, when applied to a body of the laws — peculiar not only in respect of *utility* but in respect of *difficulty* — nothing less than the conversion of the whole body of common law into statute law being included in the import of it—that the peculiar point of view in which, on this occasion, it has been necessary to contemplate it, will necessitate a particular mention of it in this address.

In this quality, accordingly, — to which, on this particular occasion, for distinction sake, it may be not improper to add the appellation of *all-comprehensiveness*, — in this, together with *notoriety* and *justifiedness* — (by *notoriety* understand here, as before, *intrinsic aptitude* for notoriety) — in these will be seen three qualities — and the *only* three qualities — which, on the occasion of the offer here submitted to you respecting a body of laws, it will be necessary for me to hold up in any special manner to your view: all three of them as being — *completeness* as there explained not excepted — such, as, till this your proffered servant ventured on the enterprise, no draughtsman in legislation ever professed to give, or for aught appears ever so much as thought of giving, in any tolerable degree, by means of any peculiarity of plan or texture, to the body of his proposed laws. Under the head of *all-comprehensiveness*, therefore, as applied to the proposed work in question — under this head, no less than under the several heads of *notoriety* and *justifiedness*, explanations of considerable length will be indispensably necessary.

As to *intrinsic usefulness*, obvious as is the title it possesses to a place not only in most literary works, but more particularly in this, no less obvious will be the non-necessity of making on the present occasion any special or separate mention of it: this being a quality which, of course, and without his being at the trouble of saying so, no man who ever pens a proposed law can fail of being understood, as wishing to be thought to be, and with whatever degree of sincerity professing to be, anxious in his endeavour to bestow upon it. "*Whereas it is expedient*" — only upon British legislators could such a phrase pass itself off in the character of a *reason*, or for anything better than a mark of dotage.

But in the ulterior quality of *justifiedness*, i. e. *manifested usefulness*, the quality of simple *usefulness* is included: *justifiedness*, a quality in which, on the present occasion, so much attention will be seen to have been bestowed: and in this may be seen a quality, which not only has never yet been endeavoured to be given to any comprehensive body of laws, but, until thus noticed by this your proffered servant, appears not to have ever yet been numbered by any person among the *properties desirable* in, or properly appertaining to, any such work.

LETTER III.

I. *On Notoriety, as applied to* LAW.

As in every other part of the field of human action, so in the field of law, only in so far as it is present to the mind, can any idea be productive of any effect. Ah, poor silly man! that of such a truth, at this time of day, thou shouldst need to be reminded!

Yes: only in proportion as the conception a man has of it is clear, correct, and complete, can the ordinances of the law be conformed to, its benefits claimed and enjoyed, its perils avoided—those perils, with which every path, every step in the field of human action, may be encompassed.

To lodge and fix in *each* man's mind, that portion of the matter of law on which *his* fate is thus dependent — exists there that State, in which this operation is not among the most important duties of the government?

Yet, where is the state, by the government of which any attention whatsoever appears to have been paid to it?*

To enable government to fulfil it to the highest degree possible, has ever been amongst the most anxious of my desires.

For this purpose, means *extrinsic* to the law itself present themselves of course to every mind: — publishing them, for example, in cheap editions; causing them to be publicly read by certain persons in certain places.

Of all such *extrinsic* means of notification, next to nothing, however, will be the effect, unless the matter of the law be prepared for the operation, by the distribution made of its contents, and the form into which they are cast.

For this purpose, four leading principles of division, with as many correspondent divisions, have been contemplated and employed by me.

1. First principle of division. — For the benefit of each individual, separate from those portions of the matter of law on which he *has* a concern, all those with which he has *not* any concern. Correspondent division, Laws of *universal concernment* — laws of *special* or *particular concernment*. Code, to which are consigned all laws of universal concernment, *the General Code*. Codes, in each of which that portion of the matter of law in which only one or two† denominations or descriptions of persons are concerned, *Particular Codes*.

That portion of the matter of law, with which each individual is concerned to be acquainted, will therefore consist of two parts: viz. 1. The General Code: 2. The collection of Particular Codes; viz. those which correspond to the several particular situations in society, which it happens to him to occupy.

2. Second principle of division. — For the benefit of each individual, in that portion of the matter of law in which he has a concern, separate from those portions which he is concerned to bear constantly in mind, those which he is *not* concerned to bear constantly in mind. Correspondent division, Laws of *constant* concernment — laws of *occasional* concernment.

By a law of *constant* concernment, understand a law which applies itself to this or that incident, which is of such a nature, that without a man's having warning of it, it may take place at any time: without his having warning, and thence without his having sufficient time for considering with himself how to act, or for taking advice of others. Example of laws of *constant* concernment: Laws declaring how, in case of an unexpected attack on his person or property, a man may, and how he may *not*, comport himself for the purpose of *self-defence*.

Note, that, though in the instance of such laws as are of *constant* concernment, the chance of their being present to the mind at the time for action, is in the highest degree dependent on their brevity and compactness, — yet, in the instance of such as are of *occasional* concernment, in such sort as to admit of time for deliberation and consultation, — though, even in regard to these, intelligibility may be destroyed by want of *compactness*, — brevity is comparatively immaterial. In the case of a *dictionary*, for example, the largest is little less easily consulted than the smallest. And thus it is — thus, and no otherwise — that *brevity* and *compactness* may be brought into consistency with *completeness*.

3. Third principle of division and distribution. — In the case of laws of *constant* concernment, — from such laws, on the observance of which the greatest quantity of interest is at stake, detach those, on the observance of which not so great a quantity of interest is at stake. Use of this separation, employing the most efficient means in planting in the mind those portions of the matter of law, on the observance of which the greatest quantity of interest is at stake. Correspondent division — 1. Laws of *major* concernment: 2. Laws of *minor* concernment.

4. Fourth principle of division. — In regard to laws in general, but more particularly in the instance of such as are *of constant con-*

* As if from a rubbish-cart, a continually increasing and ever shapeless mass of law is, from time to time, shot down upon the heads of the people: and out of this rubbish, and at his peril, is each man left to pick out what belongs to him. Thus, in pouring forth law, does the government, as it is written, "*rain down snares.*"

† Two: as in case of correlative situations: such as those of *husband* and *wife*, *master* and *servant*. Add to these occasionally, other situations incidentally connected with the principal ones.

cernment, from those *principal* portions of matter, to which the mind is not led by any other, and which accordingly cannot be kept in mind otherwise than by themselves, — separate all such portions of *subsidiary* matter, to which, especially when once presented to it, the mind will naturally be led by those same *principal* ones. In this case, for example, are *rules* and *examples: rules* on the one hand; examples of those same rules on the other. Correspondent division,—division into *Main-text* and *Expository-matter*. — Compared with expository-matter, main-text possesses not any thing by which its continuance in, or regress into, the mind is facilitated.* But, suppose the *main-text* once well anchored in the mind, the occasional regress of the *expository-matter* will find a constant source of facility in the relation it bears to the *main-text*.

Separated from the expository-matter, the main-text would thus constitute a sort of *abridgment of the law:* an abridgment of the body at large, as composed of main-text and expository-matter taken together. Thus there would be given the first example that has ever been given, or perhaps imagined, of a Law Abridgment, in which, as far as it went, confidence might be reposed with safety. In this way alone can you be assured, that what is given as and for the expression of the legislator's will, *is* so.†

In *prose*, or even in *verse*, of that part of the law which is of *universal* and *constant* and *major* concernment, the main-text might be got by heart in *Schools*. And to this might be added the correspondent part of the body of *reasons*.‡

That, on every occasion of life, every man should be his own lawyer is plainly impossible. In many instances want of talent, in any instance want of time, may suffice to render it so. But, on this point as well as on others,

* In a body of law, of which, it being in its fabric *reasonable*, the *reasonableness* is manifested by a correspondent and perpetual accompaniment of *reasons*, these reasons being deduced from the universally prevalent and universally recognised principles of human nature, viz. human *feelings*, *interests*, *desires*, and *motives*, will of themselves help to lodge, and serve to keep, in the mind, those portions of the matter of law, of which the *main-text* will require to be composed. — See Letter V. *Of Justifiedness, &c.*

On the ground of consitutional law,—you who on that ground have so nobly shaken off the yoke of English law—the system you have already is, as to all essentials, a model for all nations. Accept these my services, so shall it be on the ground of penal law, so shall it be on the ground of *civil* law: accept my services, at one lift you shall ease your necks of that degrading yoke. Without parliamentary reform, Britain cannot, without revolution or civil war, no other monarchy can, take for a model the essentials of your *constitutional* law: but on the ground of *penal* law, and to no inconsiderable extent, even on the ground of *civil* law, might it—and without change in any part of the constitutional law-branch, be made use of as a model anywhere: in Russia, in Spain, in Morocco. Hence it was —and without any thought or need of betraying him, not any act of self-denying beneficence, (for my views of the contagious influence of reason in the character of a precedent, were not at that time so clear as they have become since) hence it was that these my services were offered to the Alexander of these days.

† Of the distinction between *Main-Text* and *Expository-Matter*—and of the mode in which, by omission of the *Expository-Matter*, a sort of *abridgment* might be made,—take, upon a plan as compressed as possible, the following examples:—

I. *Main-Text.* Definition of a simple personal injury.

A simple personal injury is—where, without LAWFUL CAUSE (1) *one individual* CAUSES, (2) *or* CONTRIBUTES (3) *to cause, to another, any bodily pain or uneasiness, more or less* SEVERE *or* SLIGHT, (4) *without any ulterior* MISCHIEF (5).

II. *Expository-Matter.*

To each of the *five* leading words distinguished by capitals, explanations are subjoined: in *three* of the *five* instances, viz. Nos. 1, 3, and 5, these explanations would serve alike for the definition of other offences; and reference would accordingly be made to so many *General Titles;* in the two other instances, the explanation would perhaps have no ulterior application. In the present instance, the *Explanatory-Matter* occupies, in the whole, about *five* or *six* times the space occupied by the *Main-Text.* Here then may be seen an example, of the amount of the saving made upon the burthen on the memory. As to the *Expository-Matter*, some parts of it apply to cases, which, naturally speaking, will be rarely exemplified; other parts may be expected to be anchored in the mind, by the relation they bear to human feelings, and to the matter of the *Main-Text*.

Upon the whole, *three* propositions will serve to close this subject: 1st, On the extent of the *notoriety* given to the laws, depends every good effect it is in their nature to produce: 2. On any such endeavour as that of accomplishing this object, by no legislature has any exertion been ever bestowed: to the accomplishment of this same object, the whole force of this your proffered servant's mind has all along been, and would all along be, applied.

*** Note, that with reference to the matter of the *General Penal Code*, a great part of the matter of the *General Civil* or *Non-Penal Code* may be considered as bearing the relation of *Expository-Matter*. Thus, under appropriate penalties, the *Penal Code* having forbid the meddling with property without *title*, part of the *Civil Code* will be occupied in the exposition of what belongs to the several *sorts of titles:* and, of these, title by *Contract* being one, hence comes in that part which belongs to *Contracts.* So likewise a great part of the *Constitutional Code:* such and such being the *rights*, and *powers*, and *duties*, that appertain to the several sorts of *offices*. Thus much for a *clue* to the labyrinth: this is no place for the *details*.

‡ See letter V. *Of Justifiedness, as applied to a body of Law.*

the further the sense of independence can be carried the better: the better, if not in all eyes, at any rate in such as yours. By no man who is not a driveller, can it be expected that to every lawyer to whom he addresses himself he should be as dear as he is to himself: no man can have a lawyer at all times at his elbow.

Accept my services, — in the book of the laws, my friends, so long as the United States continue the United States, among you and your posterity, in every such accepting State, shall *every man*, if so it please its appointed legislators, find, for most purposes of consultation, *his own lawyer:* a lawyer, by whom he can neither be plundered nor betrayed.

Accept my services, — no man of tolerably liberal education but shall, if he pleases, know —know, and without effort — much more of law, than, at the end of the longest course of the intentest efforts, it is possible for the ablest lawyer to know at present. No man, be he even without education in other respects — no man but, in his leisure hours, — so he can but read — may, if so it please him, know more of law, than the most knowing among lawyers can possibly know of it at present.

LETTER IV.

II. *Of Completeness, as applied to the Body of the Laws: — and herein of Common Law.*

To be known, an object must have *existence.* But *not* to have existence — to be a mere non-entity — in this case, my friends, is a portion — nay, by far the largest portion — of that which is passed upon you for *law.* I speak of *common law*, as the phrase is: of the whole of common law. When men say to you, the *common law does this* — the *common law does that*—for whatsoever there is of reality, look not beyond the two *words* that are thus employed. In these words you have a name, pretended to be the name of a really existing object: — look for any such existing object — look for it till doomsday, no such object will you find.

Great is Diana of the Ephesians! cried the priests of the Ephesian Temple, by whom Diana was passed upon the people as the name of a really existing goddess: Diana a goddess: and of that goddess, the statue, if not the very person, at any rate the express image.

Great is Minerva of the Athenians! cried at that same time — you need not doubt of it —the priests of the Temple of Minerva at Athens: that Athens at which St. Paul made known, for the first time, the unknown God. The priests of Athens had their goddess of wisdom: it was this *Minerva.* The lawyers of the English School have her twin sister, their Goddess of Reason. *The law* (meaning the *common law*) "*The law*" (says one of her chief priests, Blackstone) "*is the perfection of reason.*" By the author of the book on Ecclesiastical Polity, Hooker, — for between lawyercraft and priestcraft there has always been the closest alliance — the law had long before been discovered to be a supernatural person, and that person of the feminine gender. Yes: exactly as much of reality was there, and is there, corresponding to the word *Minerva*, — as there is, or ever has been, corresponding to the compound appellative *common law.*

Would you wish to know what a law — a real law — is? Open the statute-book: — in every statute you have a real law: behold in that the really existing object: — the genuine object, of which the counterfeit, and pretended counterpart, is endeavoured to be put off upon you by a lawyer, as often as in any discourse of his the word *common law* is to be found.

Common law the name of an existent object? — Oh mischievous delusion — Oh impudent imposture! Behold, my friends, how, by a single letter of the alphabet, you may detect it. The next time you hear a lawyer trumpeting forth his *common law*, call upon him to produce *a common law:* defy him to produce so much as any one really existing object, of which he will have the effrontery to say, that that compound word of his is the name. Let him look for it till doomsday, no such object will he find.

Of an individual, no: but of an aggregate, yes. Will that be his answer? Possibly; for none more plausible will he find any where. Plausible the first moment, what becomes of it the next? An aggregate? Of what can it be but of individuals? An individual common law — no such thing, you have acknowledged, is to be found. Then where is the matter, of which your aggregate is composed? — No: — as soon will be find *a body of men* without *a man* in it, or *a wood* without *a tree* in it, as a thing which, without having *a common law in it*, can with truth be styled *the Common Law.*

Unfortunately, my friends,—unfortunately for us and you — in the very language which we all speak, there is a peculiarity, in a peculiar degree favourable to this imposture. Not in any existing European language but ours, is the same word in use to be employed to denote the *real* and the *fictitious entity:* not in the ancient Latin, nor in any of the modern languages derived from it: not in the ancient German, nor in any of the modern languages derived from it.

Behold here the source of the deception. But in the mind of any man, by whom this warning has been received, no deception will it produce, unless in this instance imposture be more acceptable to him than truth. In the article *a* — in the single letter *a* — he has an Ithuriel's spear: by the touch of it

he may, as often as he pleases, lay bare the imposture. *A statute law*, yes: *a common law*, no: no such thing to be found.

Be it a reality — be it a mere fiction — what is but too undeniable, and too severely felt, a something all this while there is, with which you are ever and anon perplexed and plagued, under the name of *common law*.

"Yes," says our lawyer: "and, allowing to you that in common law there is no such thing as a law, yet what you will not deny — and what will equally suit my purpose, is — that such things there are — yes, and in no small abundance — such things there are as rules of law." So much for our lawyer.

Rules? yes, say I: *Rules of law?* No. These rules, who are they made by? To this question, to find any positive answer is possible or not, as it may happen. But what is not only always possible, but always true, is — that the person or persons, — by whom these *rules*, whatever they are, are made,— is or are, in every instance, without exception, a person or persons, who, in respect of any part he or they may take, or be supposed to take, in the laying down of any such rules, — have not any title to make law, or to join in making law.

The sort of person, whose case, among those who have not a title to make law, comes nearest to the case of those who have, is *a judge*. But no law does any judge, as such, ever so much as pretend to make, or to bear any part in making.

What, if passed, he would take upon him to say he does is — to *declare* law: to declare what, in the instance in question, is law: to declare that a discourse, composed of such or such a set of words, is *a rule of law*. Thus speaking, he would be speaking the words put into his mouth by Blackstone.

Meantime, — be it or be it not, *a rule of law*,—here at any rate is a rule, which, having been made, must have been made by somebody. What is more, not only has it been made, but, by some judge whose duty it is to give to real laws the effect of law — the effect of a law, as if it were a real law, has been given to it. The effect? and what effect? exactly the same as if the words which it is composed of were so many words, constituting the whole or a part of some really existing law.

In the words in question, the rule in question, was it then ever declared before? — If *not*, then in truth and effect, though not in words, the judge, by whom this rule is declared to be a rule of law, does, in so declaring it, and acting upon it, take upon himself to make a law: to make *a* law: and this is the pretended law he takes upon him to make.

If it *was* declared before, then not having been made by a legislator, it must have had for its maker some person be he who he may, of whom thus much is known, viz. that, in the matter in question, no right had he to make law: for its maker, either some judge — that is, a man who does not pretend to have any right to make law; or some other man who was still further from having any such right than a judge is.

At any rate, not having been made by any one of your respective legislatures, this thing then, which, by your judges and your other lawyers, is passed off upon you as and for *a rule of law*, viz. of English common law — if not by a judge, by whom then was it made? for *laws* do not make themselves, any more than *snares* or *scourges*.

Of all persons, who, on the making of it, can be supposed to have had a part, the only individual, in relation to whom you can have any complete assurance of his having had a part in the making of it, is *a printer:* the *printer*, by whom the first printed book in which it was to be found was printed.

But, though it is not without example for the man by whom a book is printed to have been himself the author of it, examples of this sort are comparatively rare. In the ordinary case then, here you have *two* persons, who have, each of them, borne a part in the making of this discourse, which is palmed upon you for law: two persons, who to you, let it never be forgotten, are both foreigners.

This book then, on what ground is it that the author and the printer together can have thus taken upon them to pass it off — to pass it off in the first place upon *us*, — in the next place (such is your goodness) upon *you* as and for a book of law?

First or last, the ground — at any rate the most plausible ground that can be made, comes to this. A portion of discourse, said to have been uttered by some judge — by some judge, on the occasion of some decision pronounced by him in the course of a suit at law. Of this description, take it at the best, was, or in the book was so said to have been, this pretended *rule of law:* a pretended rule of law made, or pretended to have been made, by a functionary, who, as such, neither had, nor (as you have seen) could so much as have pretended to have, any right or title to make law, or so much as to bear any part in the making of any one law.

Yet, in relation to law, be he who he may, this judge not only claimed a right to do, but has an indisputable right to do something. What is this something? Take, in the first place, to render the matter intelligible, the case of the only real sort of law. *Statute law:* and suppose *that* the sort of law under which the judge is acting. What in this case is it that, in relation to this same law, he has to do? By some person — say *a plaintiff* — the judge has been called upon to do something at his instance: something at the charge of

some other person who, if he opposes what is thus called for, becomes thereby a *defendant.* "Why is it that I am to do this, which you are thus calling upon me to do?" says the judge: "Because (says the plaintiff) a law there is, which, in the event of your being called upon by a person circumstanced as I am, has ordained that, at the charge of a person circumstanced as the defendant is, a person, circumstanced as you are, shall so do." *This law says so and so*: look at it here if you have need: *it is a discourse* which is in print; and to which, at such or such a time, by the constituted authorities, whose undisputed right it was to do so, was given the name and force of law.

Hearing this, or to this effect, the judge—(the facts on which the plaintiff grounds himself being regarded as proved)—the judge, does he do that which by the plaintiff he is thus called upon to do? What he thereupon and thereby declares—declares expressly, or by necessary implication, is—that the portion of law, in virtue of which the plaintiff called upon him so to do, is a portion of law made and endued with the force of law, by an authority competent so to do: and that of this discourse the true sense is the very sense which the plaintiff, on the occasion of the application so made by him, has been ascribing to it.

Thus doing, what is it that, in current language, the judge is said to have been doing? *Answer: pronouncing a decision:* a judicial decision: in particular a judgment, or a decree. Sometimes it is called by the one name, sometimes by the other: whereupon, in virtue, and in pursuance of this decision, if need be, out goes moreover in his name an *order*—*a writ*—*a rule*:—sometimes it is called by one of these names, sometimes by another:—but if it be a *rule*, nothing more than a *particular* rule, bearing upon the individual persons and things in question:—at any rate, ordering the defendant to do so and so, or ordering or empowering somebody else to do so and so at his charge.

That you may see the more clearly what is done under sham law, herein above then you have an account of what takes place under real law. Well now, suppose *statute law* out of the case, what is done is done then in the name of *the common law.* In this case then, observe what there is of reality, and what there is of fiction. What, in this case, supposing the matter contested really has place, is, as in the other case, *a decision:* a decision pronounced by a judge: say by that same judge: a decision, by which expression is given to an act of his *judgment*, followed by an *order*, or what is equivalent, by which expression is given to an act of his *will.* The *order* is but *particular:* the *decision* is in the same case.

But, to justify him in the pronouncing of this decision, something which men are prepared to receive as law is necessary. *Real law*, by the supposition there is none: fictitious law must therefore be feigned for the purpose. What does he then?—As above, under the name of *a rule of law*, either he makes for the purpose a piece of law of his own,—or, as above, he refers to, and adopts, and employs for his justification, a piece of law already made, or said to have been already made, by some other judge or judges.

What must all this while be acknowledged is—that, setting aside the question of its propriety and utility in other respects—if, so far as regards *certainty*,—viz. on the part of the decision, *certainty*, and on the part of those persons whose lot depends on it, the faculty of being *assured* beforehand what it will eventually be—a decision grounded on this sham law were upon a par with a decision grounded on statute law, thus far at least it would come to the same thing; and it would be matter of indifference, whether the rule acted upon were put into the state of *statute law*, or kept in the state of *common law.* In that case, for determining the utility of the proposed operation called *codification*, the only question might be—as between the two sorts of law—which of the two, their respective *sources* considered, afforded, generally speaking, the fairest promise of being most conducive to the universal interest?—that which, at the present time, in contemplation of the exigences of the present time, would have for its authors citizens of the state, mostly natives of the country,—chosen by the rest of the citizens, in like manner mostly natives,—or that which, in the course of several hundred years, was made at different times by from one to five persons, every one of them appointed by a monarch—by a monarch, under a constitution, of which, even in its most improved state, the yoke was found by you to be so grievous, that, at the imminent peril of your lives and fortunes, and, by the actual sacrifice of them to no small extent, you resolved to shake it off, and shook it off accordingly.

Thus much as to what, for illustration sake, may be conceived to have been the case. But alas! look to what is really the case, the more closely you examine into it, the more clearly will you perceive, that even on the ground of certainty, no comparison will this sham law be able to stand with real law. Yes: as well in point of *stability* might you compare the waves of the ocean with the rock they beat upon, as in point of *certainty* common law with statute law:—with this only genuine sort of law, which it is here proposed to substitute throughout to that spurious sort.

Suppose then, my friend, whoever you are,

— suppose that, on the strength of this or that supposed *particular decision*, or this or that *general rule*, by the advice of a lawyer whom you have consulted, a suit at law has been engaged in by you, either in the situation of plaintiff, or in the situation of defendant: for simplicity sake, say in that of plaintiff: if in that of defendant, the same or the correspondent observations will still apply.

In appearance, suppose this decision ever so clearly decisive in your favour. Observe how many and what chances there are of its proving insufficient: insufficient, and by reason of its insufficiency occasioning you to lose your cause. Observe the list of *objections* — observe the alleged grounds or causes of *invalidation;* grounds or causes more or less peremptory, through which it has to run the gauntlet.

Of the rules in question so improperly called *rules of law*, the sources are, as above, *decisions:* of these general rules, particular decisions: from preceding decisions come rules, and from these rules again succeeding decisions.

Out of these rules and decisions are made *treatises* and *abridgments: treatises*, containing, with or without rules, argumentation about rules; *abridgments*, containing alleged rules, with or without — commonly without — the argumentation out of which the rules were spun, and in which they were drowned.

The books, in which are contained the decisions said to have been pronounced on each individual occasion, with the argumentation by which they are said to have been preceded, and the rules which in the course of that argumentation are supposed to have been laid down as referred to, are called *Report Books*.

Behold now a sample of the *objections* — of the alleged causes of invalidity or insufficiency, on the ground of any one of which, much more of all of them or a number of them together, the decision or supposed decision, on which the confidence of your advisers rested, may by the judge be found to be insufficient: insufficient in such sort that, in consequence of the alleged insufficiency, you will lose your cause. Behold them, if your patience serves you, here below.*

Thus in the case of common law. In the case of statute law, of all these sources of uncertainty and insecurity what is the number that can have place? Not one. In the case

* 1. If there be but *one* report book in question, the reputation of the reporter not *positively* high in the scale of accuracy.

2. If there be *two* report books reporting the same cause, and giving statements in any material particular different, — of that which is in your favour the reputation in the scale of accuracy not so high as of that which is against you: if, on either side, or on both sides, conflicting reports more than one, confusion and uncertainty proportionable.

3. The whole aggregate of the relevant facts not sufficiently stated: if it had been, the decision, or the rule, would not have been, as it now appears to be, in your favour.

4. The matter in dispute was not of such value, as to have engaged, either on the part of the arguing counsel on the side opposite to yours, or on the part of the judge, a degree of attention sufficient to warrant the placing any such reliance on the decision, or the rule, as is or can be adequate to your purpose.

5. On the side opposite to the decision, or the rule relied upon by you, the counsel was not of such known ability, as to have brought out against it all the objections that might have been brought out.

6. Of the point, on which the particular decision in question was grounded, — the importance, with reference to the ultimate result of the cause to the parties, was not so great as to have attracted to it, on the part of the counsel as above, or the judge, a portion of attention adequate to the purpose: with reference to the principal point, this collateral point was either altogether irrelevant, or but collaterally and weakly relevant.

7. I. In case of unanimity real or apparent, the *reputation* of the judges in general, or of the presiding judge, was but low:—low, viz. either in the scale of *probity*, or else in the scale of intellectual *aptitude.*

8. II. In the particular class of cases in question, without prejudice to probity or intellectual aptitude, the state of the times was such, as would naturally be productive of a too favourable prepossession, in favour of the decision or rule on which you lean.

9. III. In a case of known want of unanimity, the reputation of the judges, by whose preponderant suffrages the decision on which you bear was pronounced, or the rule laid down, was not so high in the scale of reputation, as that of the judge or judges who were on the opposite side.

10. IV. The opinion of the bar was in general decidedly and notoriously adverse to the decision, or the rule, on which you lean.

11. The printed and published decisions in question, overruled by an unprinted and unpublished one, the report of which is inaccessible, and even unknown, to every man, but the one, who happening to be possessed of it in manuscript comes out with it, if it happens to suit his purpose; otherwise not.

12 to 21. In case of decisions, two or more, pronounced, or rules laid down, — whether at the same time by judicatories of equal authority, or at different times by the same judicatory, — some favourable to you, others adverse, — in this case, while the above objections are opposed to those which are in your favour, the grounds of confidence, respectively opposite to these objections, may, in many of the instances, be employed in support of such decisions or rules as appear to be against you.

22. Thus stands the matter in England, and thence in your several American United States. In any one of these states, add the ulterior source of doubt and uncertainty to your prejudice, which may have place, in respect of relevancy to the state of law and society in these states in general, or in your own in particular.

of statute law, no law can ever come into competition with any law of posterior date.

To the necessary *uncertainty* of common law, add now its equally necessary *incorrigibility:* incorrigibility, as in relation to all other points of imperfection, so in a particular manner in relation to this. Imperfections in statute law are continually cured by statute law: imperfections in common law can never be thoroughly cured by common law. By common law they *can* not be cured: and by statute law it has never been the *fashion* to cure them. Without the concurrence of lawyers, non-lawyers in the legislature would not know how, or would be afraid to attempt, to cure them: but to lawyers, to bestow any such concurrence is not, generally speaking, by any means pleasant. In *common law*, they behold, as you have seen, the goddess of their idolatry: by anything that contributes to the lessening of her glory, they have nothing to gain, they have much to lose.

By common law, I say, imperfections in common law never can be cured. By every attempt made at any such cure, whether for the moment the particular mischief in question be or be not excluded, general *uncertainty*—a disease, with which as with a palsy, the whole frame of this fictitious body is shaken—is a sure result. If, by the judicatory in question, on the occasion in question, the authority of the decision or the rule in question can be overthrown, so by this same or any other such judicatory may any other: in this way may the authority of the whole system of common law be shaken: shaken, and with it, in so far as the contrariety is known, the confidence hitherto so generally, but always so unwarrantably, reposed in it.

To save it from this reproach, recourse has been had to one or other of two expedients; viz. *forced construction*, or *distinction*.

First then as to *forced construction*. Upon the phrase employed in giving expression to the decision or the rule in question, the judge puts a sense of his own, such as no other man upon earth would have thought of putting upon it. But, by this remedy, the disease, instead of being cured, is aggravated. The more extensive a man's acquaintance is with the language of common law, the greater the number he finds of these *forced constructions:* and the greater the number of them thus found, the better grounded, and naturally the stronger, is the general assurance thus obtained, that the whole of the field over which the dominion of common law has extended itself, has been thick sown by her with man-traps.

Thus much as to *forced construction*. Now as to *distinction: taking a distinction* as the phrase is.

In a statute law, on the occasion of every rule there laid down, a sort of caution, which by the penman is observed of course, is—to ask himself whether his purpose requires that the rule should be conformed to throughout the whole of the extent which the words of it import,—or whether, to give a correct expression to his meaning, there may not be this or that *exception*, that requires to be taken out of it: and if yes, set down of course is the description of all such particular exceptions, in the train of the general rule. This being the case, one good consequence is—that whatsoever notification is given to the general rule, is given—and, at the same time, to all the several exceptions, by which its extent is limited, and its import fixed.

Such being in this respect the case under statute law, observe now how it is under common law. Open a book of common law,—be it report-book—be it abridgment—be it treatise,—among rules by dozens and by scores, scarcely will you find one, but what, if it be not itself an exception to another, or even if it is, has exceptions tacked to it. But those exceptions—at what time was it that they were respectively tacked to it? At the time of laying down the general rule? No: but each of them at a different time: on the occasion of this or that one decision was the *general rule* laid down: on the occasion of so many different decisions, pronounced each of them at a different point of time, these *several particular rules*.

When an exception of this sort is applied to, or rather taken out of, a rule,—thus it is that a *distinction* is said to be *taken*. But, to the possible number of these distinctions never can there be any adequate assurance of an end. What is the consequence? that in the whole body of rules, such as they are, of which this common law is composed, seldom can you find one, which is not pregnant with deceit and disappointment Say that, here or there, this or that one there may be, to which at no time *any* exception,—or, if exceptions have been attached to it already, any *ulterior* exception,—would ever be attached. But, whatsoever just ground for confidence to be reposed on might be framed by these few trust-worthy ones, is destroyed by the multitude of untrust-worthy ones, with which they are encompassed and confounded: I say, confounded,—for to the trust-worthy ones no *ear-mark* is there, whereby they can be distinguished from the untrust-worthy ones.

To apply this general matter to your own particular case, my friend, as above supposed. First, see how you may be disappointed and ruined, by means of a *forced construction*. The decision or the rule upon which, as above, your leaning was, is, as it stands, clearly in your favour. But, authorised by a practice so extensively pursued and so familiar to every body,—the judge, to compass his object, whatever it may be, has recourse to the ex-

pedient of a *forced construction:* he puts a new, and till then never imagined sense, upon the words, either of this very decision or this very rule in which your trust was, or of some other, which, by this means, is set in opposition to it, and enables him to destroy the effect of it.

Next, observe how you may be put into the same sad case, by means of a *distinction.* Taken in its generality — taken in the whole of its extent, with the exception of one particular part — the judge sees nothing to object to in the particular decision or the general rule on which you rely. But, upon a close view of it, he sees reason to *take a distinction:* that is, to take out of the general rule a particular case, to which it seems to him that it ought not to be considered as extending: which particular case is exactly the case in which you stand.

Such might be the uncertainty of the law — such the insecurity of the citizen under it — even if the whole mass, of the matter of which it is composed — of the matter in which these rules are contained, or out of which they are deduced — were at all times in the hands of every body. But in this respect, how stands the fact? In your country more especially, neither the complete stock of *data,* nor any thing approaching to it, is in the hands of any body. Volumes, by scores, by hundreds, not to say by thousands, — dollars by thousands, not to say by ten thousands — would be necessary to complete it: — in a word, a complete *law library* would be necessary: nothing less. Whether, even in this country, in which this immense mass of delusive learning has its source, in any one hand any one such collection is to be found, is more than I would undertake to say: what I *would* undertake to say, and without much fear of contradiction, is — that in no one hand would any one such thing be to be found in all your United States, on the day on which these letters are landed.

If even, in each of your United States, not one only, but half a dozen hands, each of them possessed of such a treasure, were to be found, what would the citizens at large be the better for it? The result would be a monopoly: a monopoly of this necessary of life, — a monopoly, with this half-dozen of monopolists sharing in it.

Suppose even, that in the day, for example, on which this letter of mine is landed, a large library thus complete were in the house of every lawyer in all your United States, — even in this miraculous case, what would any one of those your lawyers, not to speak of the rest of you, be the better for it? By the next arrival comes a cargo of fresh English made law, by which to an indefinite extent the anterior stock of law is superseded: some of the general rules, *completely* overturned and superseded, by rules of equal extent, or by rules of greater extent in which they are included; — others, cut into and superseded *in part,* by distinctions and exceptions.

Even if it came from a legitimate source — from hands competent to make law — thus incapable of being known, even to your lawyers, would this English common law be: thus incapable are they of knowing it: they, whose profession it is to know it, and who, on pretence of knowing it, take payment of you for communicating to you what they thus pretend to know.

But, if such is the case with those who pretend, and are thence supposed to know it, — what, my friends, must *your* case be, — you who, knowing but too well that you neither do know it, nor of yourselves are capable of knowing it, have no other means of keeping yourselves safe from the perils with which you are encompassed by it, than by repairing, on the occasion of each question, to one of these your living oracles, and asking him what it is *he* knows or thinks about it?

Great as it is, the perpetual state of insecurity, in which you are all kept by this imposture, is not the only mischief produced by it. From the *uncertainty* comes not only *insecurity* but *corruption: insecurity,* in the situation of the *non-lawyer — corruption,* or at least a most powerful and perpetual temptation to it, in the situation of the *lawyer,* and in particular in that of the *judge.*

In most of the instances, in which under common law a case has been seriously argued, the judge might, without reproach to his probity or his judgment, have pronounced a decision opposite to that actually pronounced by him. — In the character of a well considered maxim, the fruit of long meditation, operating upon long experience, from how many mouths, without communication with one another, has it not happened to me to hear an observation to this effect? no such conception at the same time appearing to have been entertained by the author, as that by this observation any sort of reproach was cast upon this spurious sort of law, or upon any man from whom it ever received support or eulogy.

No cause ought ever to be given up as desperate! First from the mouth of *Wedderburn* — and in these very words — was that aphorism brought to me, presently after it was uttered. Wedderburn was at that very time in office; soon afterwards, — under the title of Lord Loughborough, surmounted afterwards by that of Earl of Rosslyn, — Lord High Chancellor of England, head of English law.

In your country — not to speak of this — the power which is thus in every instance *arbitrarily,* is it ever in any instance *corruptly* exercised? This it *is* not for me to say; for

it is not possible for me to know. This, however, I will take upon me to say — that, for corruption, supposing at any time a man disposed to give himself to it, the head of man could not conceive, nor the heart of man desire, a more efficient cloak: and that, under it, whatsoever corruption has not place, it is to the individual, not to the state of the law in this respect—or, if to the state of the law, not to the state of this part of the law — that all thanks are due.

True it is, that under the worst system of judicature imaginable, some points there would always be, too clear to admit of wrong decision without infamy. But, in regard to the bulk of those which, in the present state of judicature — whether among us or among you — come actually under debate, — if, being a judge, my object were to gratify undue favour, prejudice, antipathy — even lust of gain, so it were without need of communication between myself and the party — no difficulty should I find; and if, being in possession of supreme power, it were my desire that judges should have the faculty of acting corruptly for ever in their hands, no means so effectual could I find, as that of ordaining that, throughout the whole field of law, the rule of action should be and continue every where in the state of *common law*, no where in the state of *statute law*. For my own part, considering the nature of man on the one hand, and the state of the law on the other, I do not see how it is possible that corruption—corruption of this necessarily unpunishable kind — should not, in every country, to the extent of the dominion exercised by common law, be in no inconsiderable degree frequent.

To any judge not known to me — to any judge individually taken — nothing of corruptness can I impute, in my own mind, on the score of his acting under the system in question, thus favourable to corruption as it is. But, not altogether easy would it be for me, in my own thoughts, to exempt from the imputation of corruption the mind of a judge, who, with this picture before his eyes — this picture of the invitation given by the system to corruption — should persevere in any such endeavour, as that of putting an exclusion upon any measure, which, without being pregnant with mischief in any assignable shape, should afford a promise of making any sort of advance towards the ridding the community, be it what it may, of so pestilential a nuisance.

After all, when corruption, on the part of the judge, is spoken of as a thing distinct from uncertainty on the part of the law, only to the *cause*, or perhaps to the *quantity* of the effect, does the distinction apply, — not to the *nature* of the effect.

For argument's sake, suppose every judge, without exception, were corrupt: wherein would ultimately consist the real mischief? — wherein, but in this, viz. that no man could possess any tolerably firm assurance, but that, by means of this corruption, he remained continually exposed to injury: to injury, in every shape and without redress.

Well: though in degree it be extreme, *in specie* all this is but *uncertainty*: — *uncertainty* of the law — and nothing more.

Away with exaggeration — away with indiscriminating antipathy. A scourge as it is now, this sham law — time *was* when it was a blessing: nay, in a certain point of view, it will be seen to be a blessing even *now*.

You have seen what it is made of, and how it has been made, — viz. from particular decisions, general rules deduced by judges and others: by the authors or by others, those rules, before printing was in use, accidentally committed to writing, — after that to printing, — and thus made public: every tittle of it made by individuals, not one of whom so much as pretended to have any such right as that of *making law*. But in those same days, —improper as was the language by which any such name as *law* was given to them, — these rules, such as they were, were by no means without their use. Decisions and rules together, they formed, — not only a *light*, by which the paths taken by succeeding judges were lightened, — but a *barrier*, by which they were in some degree kept from going astray. In the character of a *barrier*, the effect they produced was in some sort, however imperfectly, the effect produced by *real* law: in the character of a *light*, howsoever faint, and frequently false, they produced another good effect; and *that* of a sort very scantily and irregularly, if at all, produced by real law. Ever and anon, by *reasons* — by reasons such as they were — and not always bad ones — a ground was made for these rules; and, along with the rest of the matter, these reasons were made public: made public — and *that* at a time when little or nothing in the shape of reasons was visible, in the character of an accompaniment to any portion of *real* law.

Antecedently to the appearance of these lights, what was the state of the rule of action, and of the citizen under it? Every decision was completely arbitrary: every judge had to begin afresh: no improvement in judicature; no art, no science, because no experience: no materials out of which grounds for law — for *real* law — could be made.

With the *decisions* were necessarily recorded the *cases* by which decision was called for: for example, the sorts of *offences* capable of being committed: the sorts of *contracts* capable of being entered into: the sorts of *incidents*, by which, to one or other of the parties, or to the public at large, the contract was capable of being rendered unexpectedly

injurious: the sorts of *titles*, by which a reasonable claim to property was capable of being produced or put an end to.

A library, composed of the books in which these cases are thus brought to view — such a library, even though there were not so much as a single *law* in it, is at any rate a rich storehouse of materials for legislation: such a storehouse, that without it no tolerably adequate system of laws could be made. The more ample the stock, — so it be not to such a degree vast that the mind is lost in it, — the more effectual the provision made, made for this most necessary and arduous of all intellectual works.

The greatest quantity of wealth possessed in this shape by any other nation, is penury, in comparison of that which has been furnished by English Common Law. In this point of view, it is a blessing even now. As a light to the legislator, to assist him in the making of real law, it is a matchless blessing — this sham law: as a substitute to real law, now that the times are ripe for the making of real law, — in this character, indeed, though in this character only, is it a curse.

Time was, when, for want of recorded experience, the pen of the legislator could find no tolerably adequate indications for its guidance. Time was: — but that time is now at least at an end. Yes. In comparison of the practice of deciding each individual case purely on its own ground, without regard to *consistency* in relation to former decisions, and without looking for *guidance* to any lights derivable from former ones, — the practice — of resorting to memorandums made of the purport of former decisions, and of the circumstances in which they were pronounced, — was, doubtless, notwithstanding the looseness and untrustworthiness so frequently exemplified in those memorandums, a vast improvement. But, on no grounds can the advantageousness of this practice be demonstrated, but on those same grounds the superior advantageousness of the form of *real law*, — in comparison of the conjectural and fictitious substitute, framed by imagination out of those same materials, — will be rendered ten times more strongly and clearly visible.

Every man his own lawyer! — Behold in this the point to aim at.

Why every man his own lawyer? — 1. Because no man's interest is as dear to his lawyer as it is to himself.

2. It is not every man that can afford to pay a lawyer.

3. No man, how rich soever, can have a lawyer always at his elbow.

Every man his own lawyer? Yes: — but who shall make him so? Not he himself, as would be the case, if, instead of lawyer, you were to say *tailor*, *shoemaker*, or (as may be seen in the title of a book) *broker*. One sort of person there is, by whom, so far as the nature of things allows, every man may, and by whom alone any man can, be made his own lawyer: and that is *the legislator*. I say, *so far as the nature of things allows*. For, let the legislator have done his utmost, still the possibility of a man's being his own lawyer will depend on the nature and situation of the man. As to more or less of the law, to some will always be wanting the necessary *talents*: to any one, may at any time be wanting the necessary *time*. No business can be mentioned, in which it may not incidentally be more for a man's advantage to carry it on by proxy, than to carry it on himself. To so universal a rule, assuredly no exception can be afforded by law business.

No: never can the profession of a lawyer be wholly superseded: never, at any rate, the office of a judge.

But, in the impossibility of attaining the summit of perfection, no reason can be given for not aiming at it: by every step made towards it by the legislator, a blessing is bestowed.

Take, in its utmost extent, the mass of legislative matter with which, in the country in question, the universal interest requires that the field of law shall be covered — take any portion of it whatsoever, — what is necessary is — that such part as the pen of the draughtsman finds in the state of *common law*, and such part as it finds in the state of statute law, should, without any distinction, be cast together in one mass. What part he finds in the one state — what part he finds in the other — what part of the field, finding it as yet unoccupied by both, he sees reason to cover with new matter — in no instance need any trace of distinction be exhibited: none, at least, in respect of the *form* given to the matter: howsoever, in the way of note, intimation may be conveyed of the distinctions which once had place. Accidental as these distinctions are — the boundaries shifting place from day to day — no use can there be in keeping them on foot.

All this while, let it never be out of mind — that, in no case, by any part of the authorized rule of action, can any good effect be produced, any further than as it is *known*: to no part of it is it possible to be made *known*, any further than it has been made *complete*

As to the arrangements which have been made, and would be employed, for securing to the mass of law in question, as far as it goes, so essential a property, — considering the limits necessary to be set to the length of this address — and the situation of by far the greatest number of the eyes for which it is designed, — the giving any tolerably intelligible indication of them would not here be possible.

In a work, published as long ago as the

year 1802, composed I know not how many years before, a survey, which for this purpose had been taken of the whole field of thought and action, may be already seen. Three thousand copies of that work are abroad, in countries more than one: not only by individuals, but by the constituted authorities, signal have been the marks of approbation bestowed on it: no where any fault found with it.

Yet by no government, in no nation, in or for the penning of its laws, does any such all-comprehensive survey appear to have been made. Indeed, to an unaccustomed eye, no wonder should the operation present itself as an impossible one. But, by helps derived from the useful part of logic, works of this kind — as by helps derived from algebra, works of calculation* — may be executed, such as without such helps would indeed be impossible.

To your proffered workman, this part of the task has long ceased to present so much as the idea of difficulty: so long has he been in the habit of contemplating, in this point of view, objects of all sorts and sizes. For the purposes of *public instruction*, in a work, — a copy of which the Governor of your State has, it is hoped, in his hands ere these letters can have reached yours, — the whole *field of thought and action* has again been actually subjected to a survey of this kind: in a table in which an outline of the result of that survey is brought to view, it may be seen how comparatively small a portion of that universal field can properly be taken for the *field of law.*†

* See Chrestomathia, Part II. Appendix, No. V. Table V.

† With the contents of this note let no eye trouble itself, to which the matter of law in all its forms, as well as the *tactical* branch of the art and science of logic, is not already familiar.

§ I. *Political Scheme of Division.*

1. GENERAL CODES, to one or other of which, every particle of the whole mass of the matter of law, is, in every state, capable of being referred. 1. The *Penal;* 2. The *Distributive*, or, as it is commonly called, the *Civil;* 3. The *Constitutional;* 4, 5, 6, Correspondent Codes, each of them containing a branch of the law of *Procedure* — subordinate and subsidiary, or, as they have been styled, *adjective* branches, respectively belonging to those principal ones: *judicial procedure*, belonging respectively to the *Penal* and *Civil Codes: investiture* and *divestiture* procedure, having regard to the official situations which come in question in the *Constitutional* Code. Examples of SUB-CODES, capable of being, and wont to be — under so many different titles, detached from the above-mentioned three principal ones: 1. Code of POLICE; 2. Code of COMMERCE; 3. MILITARY Code; 4. MARITIME Code, or Code of NAVIGATION; 5. Code of FOREIGN RELATIONS, or INTERNATIONAL Code, &c. &c. The description, of the matter thus detached, is determined — either by the subject to which it applies, or by the species of useful business which it has in view. To the number of these detachable Codes there are no certain limits.

§ II. *Logical Scheme of Division.*

II. Logical aspect of the law towards the several modes of human action; considered as capable of being taken for the subjects of its ordinances.

1. Antecedently to all legislation applied to the portion of the field in question, the aspect may be *obligative* or *unobligative:* in other words, *active* or *inactive*, *imperative* or *unimperative*, *coercive* or *uncoercive:* if *obligative*, *mandatory*, or *prohibitive:* in either case, *unconditionally* so or *conditionally*.

2. Subsequently to legislation applied to that same portion of that same field, the aspect, if before it was *obligative*, may be either *confirmative* or *de-obligative;* and, in either case, *unconditionally* so or *conditionally*, as above.

§ III. *Relation between the Political and the Logical Schemes of Division.*

In the *Penal code*, is and will be to be found most of the matter the aspect of which is *obligative, imperative, coercive:* the most part of it *prohibitive:* in the *Civil code* most of that matter of which the aspect is *unobligative*, *unimperative*, *uncoercive;* and of that, of which in either case the aspect is *conditional:* also in the *Constitutional Code*, most of that matter of which the aspect is *conditional;* so likewise in the several codes corresponding to the several branches of *procedure*, as above: — the case being, that the effects, which, by the respective portions of *substantive* law are respectively appointed to take place, take place accordingly or not, according as, in the character of *conditions*, the *formalities* which, by the correspondent portions of *adjective* law, are to that purpose *appointed* to be conformed to, come *in fact* to have been conformed to.

In and by each of these two above-mentioned *schemes of division*, the whole field of *law*, — and for that purpose the whole field of *thought and action*, — has been surveyed, and subjected to a mode of division, which, in the instance of the *logical* scheme at least, is *exhaustive*.

In so far as it is *obligative*, *imperative*, *coercive*, of every portion of law the fruit is *evil:* the enactment of the law is an infringement upon *natural liberty:* and, of every such infringement, in a quantity more or less considerable, *pain* or *uneasiness* is apt to be the result. Under the principle of *utility*, — or say, of *regard for the universal interest*, — in this instance, as in all others, to justify the production of evil, it is necessary that in some *shape* or other, good be produced, and in *quantity* such as to make up for and *outweigh* the evil. On this ground alone in any instance can any demand have place, for the addition of fresh *obligative* matter to the already existing stock.

To scrutinize, — for the purpose of proving, disproving, or illustrating, — the truth of the above position, is an exercise which, as it might seem,

LETTER V.

III. *Of Justifiedness as applied to a Body of Law.*

THIRD and last of the qualities hereinabove brought to view, as being indispensably

to be desired in the aggregate body of the laws, *justifiedness: justifiedness*, a quality which, supposing the reasons adequate, will, in so far as the application of them extends, be given to it by an accompaniment of *reasons*.

No: — it suffices not, that in itself the matter of the laws be throughout of a *reasonable*, that is to say of a *useful*, quality; in the degree, in which it might be, and therefore ought to be, it cannot be so, unless it be *seen*, — and thence, unless it have been *shown*, — to be so. But, useful it cannot be seen to be, but in proportion as the *considerations*, by which, in the character of *reasons*, it has been proved to be so, not only have been brought to view, — but, in the instance of the person in question, at the very time in question, are actually in view. Let this be granted, — it follows, that no mass of the matter of law is what it might be, and therefore ought to be, otherwise than in so far as, throughout the whole extent of it, it is furnished with a correspondent *body of reasons*, for its accompaniment and support.

Note well the variety of characters, in which, — to or with reference to the several descriptions of persons, to whose lot it falls, in various ways, to have concern with the several parts of the *body of the laws*, — a correspondent *body of reasons* would be of use.

I. To the citizens at large, considered separately in their character of *subjects to the law:* persons bound respectively to conform their conduct to its ordinances. To men considered in this situation, the body of *ordinances* being supposed already constructed, a correspondent body of *reasons* would serve in the double capacity of an *anchor* and a *compass:* of an anchor, to fix the details of it in the memory: of a compass, to point to the true sense in case of doubt. In a former Letter, the *main text* of the *ordinative* part was stated as being capable of serving in no inconsiderable degree, in quality of an *anchor* to the *expository matter*. But, to fix it in the memory, the main text itself stands in need of an anchor: this anchor will be found for it in the accompaniment of *reasons*. Composed, themselves, of considerations having regard to the universally exemplified, and universally recognised, principles of human nature, viz. *feelings* and *desires*, — these reasons have *their* anchor already prepared in every human breast.

II. To the *legislator* (for simplicity of conception, let us consider the whole body of the legislature as one man) — to the *legislator*, considered on the occasion of his entering upon the task of framing the body of the *ordinances* — a correspondent body of *reasons* would serve in the several capacities of an instrument of *guidance* — an instrument of salutary *restraint* — and an instrument of *support* — say a *compass*, a *barrier*, and a *support:* — in so far as it happens to him to be well-disposed, in the character of a *compass*, to point out to him the right path: in so far as it happens to him to be ill-disposed, a *barrier*, to prevent him from swerving into any wrong path; in so far as being well-disposed, it may happen to him to find himself, in respect of his ordinances, subjected to accusation at the hands of a part of his fellow-citizens, in the character of his constituents, — an instrument of *support*, to justify him in the sight of the whole.

III. To the *judge*, considered on the occasion of his being about to engage in the task of grounding a decision, and thereby putting an interpretation upon this or that article in the body of the *ordinances*. In the same three characters, in which the body of *reasons* has just been seen serving, when applied to the situation of the legislator, viz. *compass*, *barrier*, and *support*, — in the same characters may it be seen serving, when applied to the situation of the judge.

IV. To the citizens at large, considered in their character of *sensitive beings*. In this character it would be to them a source of *security* and *tranquillity* of mind. Such will this *rationale* be to each citizen, when condered as an *anchor*, serving to fix the *ordinative* part on his mind: — thereby preserving him from the dangers, liable to be produced to himself, whether by unintentional deviation on *his own* part, from the path of rectitude and safety, as marked out by the law; or, by deviation from the like path, in the several instances of the *legislator* and *the judge*, for want of that *guidance* and *restraint*, which it affords to their respective situations as above.

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might be not without its use — to the student in legislation, or to the student in general logic.

To perform any such exercise, an exertion altogether necessary will be, *that*, whatsoever it be, which shall be requisite to overcome the repugnance, which, especially in a field in which so much bad produce has been already raised, attaches itself to the use of new appellatives: for, unhappily, in so far as what is *true* and *useful* is at the same time *new*, at no less price can useful truth, in any considerable quantity, be taught or learnt. Correspondent throughout are the state of men's notions, and the state of their language: all language is originally incorrect: and by language which is incorrect, in so far as it is so, no correct ideas can be either communicated to, or entertained and anchored in, the mind. Of every man, — in proportion as he acts in pursuance of any such resolution as that which we see sometimes taken, viz. never to give acceptance to new names — the mind will continue replete with mischievous error and nonsense, while other minds are clearing themselves of those incumbrances, and stocking themselves with the opposite treasures. Of a word originally innoxious, seldom has a more pernicious abuse been made than has been made of the word *purity:* say at any rate as applied to *language;* not to speak of it as applied to morals.

What difficulties will not such an instrument be seen to throw in the way of arbitrary power, wheresoever seeking to intrude itself, whether in legislation or in judicature!

V. To *Citizens at large*, considered in the character of moral and intellectual agents, and in particular at the time of life allotted for the receipt of *instruction*. To the extent of that part of the field of action, over which the arm of the law shall have extended itself, it will serve in the additional character of *a lesson-book:* a book of *instruction* in the art and science of *morals*.

To the art and science of *morals* belongs the indication of the sorts of acts, by which, in the various situations of life, the universal interest is served or disserved,—or, in other words, general happiness in all imaginable ways increased or diminished. Of the sorts of acts by which it is in the *highest* degree diminished, the description will have been, under the several names of *offences*, given in the penal and civil code taken together, more especially in the penal. Under one or other of two heads, viz. *rules of perfect obligation* and *rules of imperfect obligation*, have the *rules of morality*—the whole aggregate of them—been wont to be ranked. Those, the general observance of which is most indispensably necessary to the *being*, as well as *well-being*, of society, are the rules of *perfect obligation:* and these are *rules of law*.

VI. To *public functionaries* in general—i. e. to such of the citizens, by whom, at any given point of time, any of the situations comprehended under that name are occupied or expected to be occupied—and in particular to all such by whom any such situations are occupied, as those of members of the legislature in any one of your United States, it will, in proportion to the extent of it as above, supposing it to be what it will aim at being, serve as a *book of instruction* in the *art and science of legislation*.

VII. To *Electors* in general—i. e. to such of the citizens, by whom at any given point of time, the right of suffrage is possessed, with reference to the filling of such of the above situations as are or shall have been filled by election, it will serve in like manner in that same character, viz. that of a *book of instruction:* a book, from which they will receive assistance, towards forming whatsoever judgment it may respectively happen to them to feel disposed to form, respecting the degree of appropriate aptitude, possessed with reference to the several official situations, by the several candidates.

In the situation of *legislator*, think how urgent is the demand for an accompanying instrument of this kind, as a security for the goodness of his ordinances—for their universal subserviency to the universal end which they ought to have in view:—as a perpetual standard of reference,—to be consulted—in the first place by *himself*, in the next place by his *constituents:* by himself, while occupied in the framing of these same ordinances; by his constituents, while occupied in judging of them. Without this accompaniment, a law is not necessarily anything more than a mere expression of *will:* only by means of such an accompaniment, can any proof be given, that to any such faculty as the *understanding*, exercise has been given in the fashioning of it. Without this accompaniment, fashioning the ordinances themselves is work for any man: so he have but the *power*—the *political* power—no driveller so weak in mind as not to be capable of executing it: the same hand, which in one moment has been employed in embroidering a robe for the Holy Virgin, may the next moment be employed in the penning of a law, consigning to death and torture the miscreant in whose eyes the exactness of its fitting shall be matter of dispute. Give a man but the power, be his *will* ever so flagitious, be it ever so foolish, *words* may be found for the expression of it: and, no sooner are they found, than they become *words of law:* and no sooner does the law thus made become *law*, than knaves by thousands, and fools by millions, not content with submitting to it, fall down and worship it.

Such throughout, but for such an accompaniment, may be the body of the ordinances under which a nation groans: on the other hand, suppose the body of the laws furnished with such an accompaniment, and that accompaniment such as it ought to be and might be, he by whom it has been framed must, by the very supposition, have been—reference had to the time at which it was framed—to say the least, among the ablest of the able, as well as among the wisest of the wise.

Suppose it then not only fashioned but in use: and now, with a mischievous or foolish law in his eye, in the situation of member of the legislature, suppose a man wishing to bring it into existence. To what course can he betake himself? There exists the *rationale*, bearing against him and his desired law perpetual testimony. Either in the whole, or in the particular part in question, he must succeed in the endeavour to remove this bar,—or, so sure as the wished-for law is proposed, the force of the bar will be brought to bear upon it, and pulverise it.

A law—any law—how can it be a good one, any further than as, in support of it, good reasons can be given? A man, who, speaking of a law, should take upon himself to declare it to be a good one, and as such supported by good and adequate reasons,—what credit can any such assertion of his be entitled to, if he has not those same reasons to produce?

Note here, that not with anything less in

view than a complete body of the laws, can the sort of accompaniment in question be fashioned, with any near approach to full and adequate advantage. Stationed at a certain degree of proximity to that universal end in view, which constitutes the ultimate and universal reason of all laws for which any good reason can be found — stationed at this point of altitude, and thence occupying the correspondent portion of extent in the field of law, *reasons* assume the character and the name of *principles*. Suppose that, no such *principle* being as yet established, a set of ordinances in detail are brought forward, and to them is added an accompaniment of reasons: what will be the consequence? Set down as they are without any all-comprehensive plan — set down consequently without any stations respectively fixed for them in any such plan — *clearness*, *correctness*, *completeness*, *compactness*, *consistency* in design, and *uniformity* of expression—all these essential qualities would be wanting to these reasons. In this state of things, fortunate indeed will be the law to which they are attached, — if, taken all together, they are not frequently productive of erroneous practical results: in a word, if, in consequence, the laws, of which they form the accompaniment, are not, to an amount more or less considerable, productive of evil consequences.

If, on any one point whatsoever, any advantage, how slight soever, could with any colour of reason be ascribed to *common* in comparison with *statute* law, it would be on the ground of the sort of *argumentative* matter of which the mass of common law is composed, and which has no place in statute law. The remark has been already made. As in a dunghill here and there a grain of corn, so in a volume of common law here and there a grain of genuine reason — reason derived from the principle of general utility — from a regard to the universal interest — may be found. But, into the proposed body of law, the grain alone, none of the excrement will be admitted: no fictions: no technical reasons: sound grain, and nothing else: a sample has, as above, been under the eye of Europe these last fifteen years.

As to the addition, that would thus be made to the *bulk* of the body of the laws, let it not be an object of alarm to any one. The more *extensive* the view taken of the field of legislation, the more *clear* and *correct* it may be: the more *extensive*, *clear*, and *correct*, the more *consistent*, *compact*, and thence *concise* it may be: for, how often does it not happen, that by some one general observation the need of a multitude of observations of detail is superseded? True it is, that, be the part of the field what it may, *limits*, to the degree of conciseness, capable of being given, to the discourse expressive of the reasons belonging to the ordinances for which the public interest presents a demand, cannot but have place: but, small indeed will the quantity be found, in comparison of what might be expected by any workman, who, on taking measure of it in his mind, should look for a pattern, either to the debates of a legislative body, or to the argumentations delivered in a judicatory, on a ground of common law.

To the survey itself, of which the proposed accompaniment of *reasons* would be the fruit, — the quality in question, viz. *all-comprehensiveness*, was, as far as faculties permitted, actually given. It will not have been for want, either of endeavour bestowed, or of time occupied, should any failure in respect of the accomplishment of this object be discovered.

In and for that part of the field of law which is occupied by *constitutional* law, the result of an attempt, made about the year 1809, towards laying a foundation for an appropriate code, has just been laid before the English public: viz. in a short tract intituled *Plan of Parliamentary Reform*: published in May 1817. To this, in and for matters of detail — to this, as far as it goes, considered at any rate in the character of a sample, reference might be already made. In the French language, for the *civil* and *penal* branches of law, a sample of a work of this sort, though in a state not complete enough in respect of extent to serve for anything more than a sample, has already been before the public for these fifteen years. To give to it not only additional *correctness* but *completeness*, towards which ulterior advances have long ago been made, would be among the objects of the labours here proposed and offered.

LETTER VI.

Opposing Interests — Interests adverse to the Acceptance, as applied to an offer of this nature.

Essentially defective would be this address, if, after explaining the nature of the offer it is intended to convey, it were to omit altogether to present to view the *interests*, which, supposing it ever so advantageous, an offer of this nature cannot but find opposed to acceptance.

Stranger as I am to everything that is individual in your country, I not only am, but shall be clearly seen to be, under the happy impossibility of having had individuals in my eye. *Situation* — from that source alone will be drawn the observation of any such particulars, as on this occasion it seems necessary I should remind you of. In anything, therefore, that follows, no individual can behold any cause of personal offence.

" To satisfy yourself beforehand what, on a given occasion will be the course a man will

take, look to the state of interests." Be the class or body of public men to which a man belongs what it may, — of public men — not to speak of other men — for a clue to the conduct, which ought to be expected at his hands, this is what, in one of my lately published works* has been ventured to be proposed in the character of a universal rule. True it is, that, in the case of this or that particular individual, — this or that particular situation, by bringing into play this or that particular interest which happens not to be exposed to observation, may, in appearance at least, afford an exception to that rule. But, what on the present occasion belongs to the question is — not how it will be in regard to a few individuals, but how it will be in regard to the majority.

Unfortunately for the interest of the majority of the people of all classes taken together, the interest of the great majority of the body composed of the men of law — say in one word the interest *of the man of law* — is, throughout the whole field of law, with very inconsiderable exceptions, in a state of hostility — irreconcilable hostility — with that universal interest. From the law in its present state, mischief — and *that* such as in its own nature is not incapable of being excluded, — is continually flowing into the community in most unhappy abundance. Of this mischief it is of course the interest of the community that every particle should be excluded: but, of this same mischief, with exceptions to a very inconsiderable amount, not only is it the interest of the man of law that every particle should remain unexcluded, but that it should at all times receive as large an increase as possible.

We have a doctrine here—that it is wrong to say anything that can tend to weaken the confidence of the people in public men: so that when the state of things is such, that the interest of public men is in a state of opposition to that of the people, it is wrong to give intimation of the existence of any such state of things. With us this aphorism has been uttered not only with grave faces but to grave faces: grave would not be the faces, to which in any assembly in your union any such lesson were delivered.

In your country, or in any other, exists there that person, to whom the opposition between the universal interest and the particular interest of the man of law can be a secret?

No surely: not upon reflection. But, in this as in so many other instances, of that of which no man need be informed, men in general may every now and then need to be reminded.

That, — under a body of law, in great part fictitious and spurious, and as to that portion which is not so, in no part, unless by accident, either known or knowable by any one whose fate depends on it, — that, under such a system, uncertainty as to the treatment he will eventually receive at the hands of the ministers of the law — *uncertainty*, and on that account *insecurity*, is an undeniable consequence, — has in the course of these letters already, it is hoped, been pretty well put out of doubt: — *insecurity*, in respect of almost every one of the possessions, on which *being* and *well-being* depend.

But — "To the glorious uncertainty of the law," in the character of the *lawyer's toast*, to whom is this adage unknown? and, of the proposition implied in it, in whose eyes was the truth ever matter of doubt? By what man, even among men of law, was it ever desired? Suppose it uttered in the character of a jest: by being uttered in good humour, does truth change its nature and become falsehood?

1. Advising Counsellor — 2. Pleading Counsellor — 3. Attorney — 4. Conveyancer, — behold in these the several characters, in one or more of which the professional lawyer acts. In every one of them, — such of you my friends, as are not lawyers, — examine and consider, whether his interest be not opposite — irreconcilably opposite to yours. In every one of them — in this, as in every other profit-enticing occupation — is it not a man's interest to render the sum of his profits as great as possible? But — his profit, whence is it but out of your loss, that it comes? Is it not therefore his interest — not only where he has the whole of the profit, that *that* profit, and thence your loss, should be as great as possible, — but also, where he has but a limited part of it — say for example a tenth — that that *part*, and thence the *whole*, out of which it is to be extracted, and in proportion to which it increases, should be as great as possible? thence, rather than that, for example, he should not gain his *ten*, you should lose your *hundred* dollars?

As in other instances, so in this, is it not the interest of the existing dealers in any article, not only to have if possible the monopoly against all other rival dealers in that same article, but also against all persons, who but for the monopoly might, instead of *customers* for it, become *makers* of it, each for his own use? Is it not, then, the interest of the man of law, that, for his benefit, it should, by as many men as possible, be found impossible for them, on the several occasions above indicated, to conduct their own affairs? Is it not, then, his interest to render it, and keep it, impossible for them — each for himself, and of himself — to know what, on each occasion, will be the treatment he will eventually ex-

* Plan of Parliamentary Reform. London 1817. Introduction, § 18.

perience at the hands of the judge? and, in consequence of this impossibility, is it not his interest to render it and keep it necessary for them, if time admits, to repair to a lawyer for advice? and, if the time does not admit, or they have omitted to apply for such advice, to render them still severer sufferers, viz. by this or that suit at law, to which the errors they have fallen into, for want of such advice, have given birth?

Of this monopoly, behold, then, in few words, the two objects: 1. Means of *being* and *well-being*, as far as dependent upon law; 2. Means of *safety* against the perils of the law.

In the case thus described, is not *every* sort of man, who has anything to sell, whether it be goods or labour? labour on whatsoever subject employed? In the occupation of *lawyer* can any circumstance be found, by which his mind is exempted from being acted upon by those same *springs of action*, by which, in the instance of every other occupation, action is determined? If not, then is it not true, that the more eminent the degree, in which any scheme of legislation promises to be conducive to the acknowledged ends of all legislation, the stronger is the interest by which he is excited to use his utmost endeavours to oppose it?

True it is, that, like every other sort of man, the lawyer has his share in the universal interest: in that interest, by which a man stands engaged to wish, that in his own instance the rule of action may be as effectually conducive to its acknowledged purposes, and thence as completely, as well as correctly, *known* as possible.

But, on the other hand, what you will not fail to observe is—how much greater, generally speaking, to each individual lawyer, the value is of his share in that *particular* interest, in which, in his quality of a *lawyer*, he has a share, than his share in that *universal* interest, in which, in his quality of *human being*, he has a share. From that ignorance of the law, from which, in respect of the management of their own affairs, non-lawyers have so much to suffer, he, in respect of *his own* affairs, is, by the supposition, comparatively speaking, and in his own opinion at least, exempt: and, as for any ignorance, under which, in respect of the management of the affairs of his *clients*, it may happen to him, by the inscrutability and uncognoscibility of the laws, to be condemned to labour,—generally speaking, the *client* alone, not the *lawyer*, will be the sufferer by it. As to the lawyer, so far from being a sufferer, in so far as the effect of the error produced by the ignorance is to produce more business, he will be a gainer by it. True it is, that, in so far as it may happen to the *client* to perceive that there has been *error*, and that it is at the door of the lawyer that the error lies, the lawyer may, in the article of reputation, be a loser. But thus to see into the secrets of the law is not the lot of every man: in particular of every man who is not a lawyer.

Of the whole field of law, what is that part, by the improvement of which the man of law has, upon the balance, most to gain or least to lose? *Answer*—The *penal* branch. Why the *penal* branch? *Answer*—Because it is *that* branch, in which, in a more particular degree, depends the protection endeavoured to be afforded, against such injuries as in their nature are most afflictive, and to which, in every situation, man is more or less exposed. Take, for example, *depredation* in its coarsest forms: such as theft, highway-robbery, house-breaking,—murder, on the occasion of either. On the one hand, the offences here in question having their source in *indigence*,—on the other hand, individuals of all classes—the indigent not excepted—being exposed to suffer by them,—hence the sufferer is very likely, and the injurer almost sure, to have but small means, if any, for purchasing professional assistance. While, from delinquency in those shapes, as a man, he has as much as any man to suffer,—as a lawyer, the man of law has less to gain from it in those shapes than in any other. A consequence is—that, supposing it possible to keep completely separate from the rest of the law these particular parts, or even the whole, of the penal branch,—what might very well happen is—that, as it would be his obvious *interest*, so would it be his real *wish*, to see the rule of action improved to the utmost. But scarcely is any such perfect separation possible. Not only between all of the several parts of the penal branch, but between the penal branch and the civil branch, both taken in the aggregate, the connexion is most intimate: too intimate to admit, in the sight of eyes naturally so jealous, any adequate assurance that improvement begun in one place could be there brought to such a stand, as to be prevented from ever extending itself any further.

True it is, that particular cases may be supposed, in which, in his situation, no peremptory bar would be found opposing itself to his concurrence, or at any rate to his neutrality, in relation to the supposed benefit. But that, in any considerable proportion of the whole number of instances, any such agreeable suppositions should be found verified, you will judge, my friends, whether it be not rather too much to hope.

Among such of your men of law as are either members of your legislature, or possess an influence more or less considerable in elections, take any individual for example: call him, as in one of our plays he has been called, *Mr. Eitherside.*

An offer, of the nature of that in question, being made to your State, *Mr. Eitherside*, supposing him to take a part in relation to it, will he support it or oppose it? Such being the question, the answer will, on each occasion, depend upon the proportion which, in *Mr. Eitherside's* eyes, has place between the value of his share in the universal interest, and the value of such part of his share in the particular interest of the profession, as is at stake upon the acceptance or rejection of the offer.

Suppose, that, in relation to the universal interest, acceptance, if given, does, in his eyes, afford a promise of a nett benefit,—the following may be stated as the cases in which, the sinister professional interest notwithstanding, it may happen to him to be desirous of being contributory to the giving of such acceptance.

1. If, on the one hand, in his eyes, the public benefit be so great, and, on the other hand, the private and personal loss so small, that the value of his share in the public benefit promises to be greater than that of his share in the profit from the public mischief.

2. If, in his eyes, such is his own individual position, that, by the benefit expected to the public from such acceptance, *no* reduction will at any time be produced in the amount of his individual share in the professional profit resulting from the public mischief, in the diminution of which the expected benefit would consist.

3. If, though *some* reduction may have place, yet—so small is its greatest amount, so distant the probably nearest time of its taking place, and so great the uncertainty whether it will take place at all,—at the same time so great the reputation to be gained by giving support to the measure, so great the disrepute to be incurred by making opposition to it,—that the giving support to it will, upon the whole, be the most advantageous course he can pursue.

It is more pre-eminently in the general character of a *precedent*—whatsoever it may be in its own particular character—that, in proportion as it is good, everything that is good is,—to every sort of man whose particular interest is hostile to the universal interest, and in particular to the man of law,—an object of terror. *Principiis obsta—set up the bar at the threshold*—is of course the motto of such men.

Sharp enough, of course, with *us*, are the eyes of the man of law, in their look-out after everything that threatens them with reform or improvement: anxious enough their endeavours to keep it out. With *you*, one circumstance there is, the tendency of which is to give additional strength to those same propensities. Among you, with the exception of what you have derived from us, everything that regards government is on so good a footing,—and consequently, upon the whole, that proportion of abuse which remains still unextirpated is, comparatively speaking, so small,—that nothing can be more natural than that this "*rest, residue*, and *remainder*," as they say in the law branch of the flash-language, should be cherished and defended, with a degree of pertinacity proportioned to its scantiness.

Yes: the more *closely* the field of law is looked into, the more clearly perceptible will be the opposition of interests, which on this ground has place, between such of you as are lawyers, and (to employ a useful phrase I have observed in books of American growth) the *balance*: the balance composed of *non-lawyers*, or—as lawyers say, or at least used to say—*lay-gents*.

Look back to the three *qualities*, held up to view as essential *endowments* of a *complete* and *adequate* body of law, *viz.* 1. *Notoriety*, or rather *intrinsic aptitude for notification*: 2. *Completeness*, including complete extirpation of *common law*; and 3. *Justifiedness*; *i. e.* the quality conferred by an adequate accompaniment of *reasons*. Not one is there of these instances, in which you will not find—that, the greater the degree in which this endowment is possessed by any proposed body of laws, the greater will be the injury done to the particular interest of the correspondent body of professional men, in so far as their prosperity is dependent upon their practice.

1. *Aptitude for notification.*—That which the lawyer lives by the sale of is—law-knowledge or the semblance of it: of this necessary article, the larger the stock which each man is enabled to receive from the only pure and genuine source—viz. the law itself,—the less the need he has of resorting for it to any such impure and inadequate source.

2. *Completeness.*—The further the rule of action is from having been rendered complete, the further it is from being capable of being made known—each part of it, to every man who has need to be acquainted with it: and, the greater the degree, in which the extension given to real law is accompanied by a correspondent extirpation of common law, the greater the degree in which true are substituted to false and deceptious lights.

3. *Justifiedness.*—In the body of the laws scarcely can that disorder be found, against which, with a degree of efficiency more or less powerful and immediate, a well compacted accompaniment of reasons will not, as you have seen, operate as a remedy: scarcely, at the same time, a disorder, from and with which, in proportion to its acerbity, the profit of the man of law does not receive its increase. Moreover, with the spurious sort of law, from the interpretation of which lawyer's profit is, so large a portion of it, derived, is mixt up

all along a quantity of argumentative matter, uttered under the name of *reasons*. True it is, that of this matter, some portion is composed of *genuine* reasons: — reasons derived from the principle of utility: — from the consideration of the effect of the species of action in question, upon *human feelings* — upon the *universal interest*. *Technical*, however, to use the name by which among themselves they speak of them — *technical* are the sort of *reasons*, of which the great mass of this same argumentative matter is composed. But wherever, conjoined to the word *reason*, you see the word *technical*, for explanation of the word, add, or substitute — for so you may do with little danger of error — the words *absurd* and *dishonest: absurd* in its *nature*, *dishonest* in its *cause*, viz. in respect of the end or object with a view to which it was framed. At the head of the list of these same reasons, may be placed *law fictions:* a sort of article, which may be defined — *lies, devised by judges to serve as instruments of*, and *cloaks to*, *injustice:* — injustice in various forms, and in that of usurpation of power in particular.

Now, suppose a complete body of *ordinances*, and for its support a correspondent *rationale*, composed of *reasons*, introduced by *principles:* a body of reasons — complete, consistent, and compact, into which no reason drawn from any other than the only pure source — the fountain of *general utility* — were admitted. In comparison of these genuine reasons, how would they appear — those spurious ones — to which lawyers have given currency one among another, for the purpose of passing them off for genuine upon their customers? What would *then* be the emotions they would excite? Awe and admiration as at present? — No: but scorn and abhorrence.

Not that from all that has been said, any such conclusion follows, as that, in a preponderant and prevalent degree, thus adverse to the universal interest is the interest of every individual lawyer among you, without exception. All that follows is — that so it is, in so far as his dependence in pecuniary matters is on his profession, — and barring all *particular* circumstances, which may happen to intervene, and give an opposite direction to the force of interest. Say that a lawyer has no interest in the uncertainty of the law, — as well might you say, that a gunpowder-maker has no interest in war, or a glazier in the breaking of windows.

Of the particular circumstances here alluded to, one there is, which, in its application, is confined to that sort of lawyer who is in possession or expectation of a seat in one of your legislatures. If, in his view of the matter, the offer promises to find favour in the eyes of his constituents, and that to such a degree, as that, in the event of his voting for the rejection or neglect of it, he will not, at a future election, be numbered among the objects of their choice: — at the same time that in his eyes the value of his official situation is greater than that of the quantity of emolument, which, by acceptance given to the offer, would at the long run be cut off from the profit of his practice.

On this occasion I will venture to put it to you, — whether, of the strength of the claim which any representative of yours can have upon you for your confidence, — the magnitude of the interests which you have at stake on the use made of the offer being considered, — there can be a clearer or more instructive test, than the sort of countenance which he shows to it.

Such, then, in relation to the grand point in question, is the state of interests. And — not to speak of individuals individually taken — taking men in bodies, what is their conduct ever determined by, if it be not by interest? — the balance, on the account taken by each man of his own interests?

Your representatives at large — whence happens it that, in that all-commanding situation, their conduct has, in relation to every thing but the state of the law, been so uniformly conformable to the interest of their constituents? Whence, but because by your matchless constitution it has been made their interest to keep this conformity inviolate.

So far as concerns the state of the *imported* part of the law, this conformity has not, at any rate in anything like an equal degree, had place. Why? Because, though in most other instances, in the event of his sacrificing your universal interest to his own particular interests, it would be in your power to punish a representative by withdrawing from him that confidence, in the continuance of which his continuance in such his situation depends; yet, for not having either brought, or used his endeavours to bring, the general mass of the law into a better state than it is in at present, it would not be in your power thus to punish him: at least consistently with any regard for justice. Why? Because, among men in general, the importance of the sort of work in question seems not as yet to have been sufficiently understood: — because what is everybody's business is nobody's business: — and because, until some prospect had been opened, of a measure, from which, with a reasonable expectation of success, a work of this sort might receive its commencement, — no one individual, in whom the blame of omission could, with any sufficient reason, be made to attach, was presented to view by the nature of the case.

But, though there exists not any one, whom, *antecedently* to the making of the offer in question, it would have been competent for you thus to punish, — on the one hand, now that such an offer *has* been made, whether in the

event of his receiving it with opposition, or even with indifference, there be any one from whom you need scruple to withdraw your confidence, is a question which lies before you.

In the exposure thus made of this sinister interest, and of the state of temptation, under which those who are partakers in it are, on all occasions, kept by it, — may be seen the eulogium — the uncontradictable eulogium — of all those, if any such there be, in the texture of whose minds there shall be found a force of principle, strong enough to oppose to it an effectual resistance.

To no man can it be matter of just reproach that his situation is such as exposes him to temptation. Be the temptation what it may, the act or line of conduct to which a man is invited by it being by the supposition mischievous, the stronger the temptation the greater his merit if he resists it. In the observations which you have just seen, every lawyer by whom any sincere assistance shall have been afforded to this offer, may in this letter behold a *testimonial*, of the merit manifested by him in the rendering so high a service: and, whatsoever may be said against the *judgment* thus exercised by him, the *probity* manifested — manifested by the self-sacrifice — will at any rate stand unquestionable.

If it be true, that, at the height to which the state of government in your country has already risen in the scale of excellence, no *ordinary benefit*, of the number of those for the receipt of which it has room still left, can be equal to the *extraordinary benefit*, which, supposing the rule of action put upon the proposed footing, would have place, — so, in the situation of representative, neither could any *ordinary service* be capable of coming into competition with the corresponding *extraordinary service*.

The completion of the work, would it be at best remote? — in any sensible degree the production of the looked-for good effect still more so? — even the very commencement of it, all chances considered, precarious? Well, if so they be — the greater the degree in which all these things are, the less is the detriment which each such professional man has to apprehend, on the score of his professional and personal interest, while the glory, of contributing in this way to the advancement of the universal interest, is, from the first moment, at his command.

Such are the *interests*, to the hostility of which a measure of the sort in question is doomed to find itself exposed. I wish it were equally in my power to put you as effectually upon your guard, against the *weapons* to which, on an occasion such as that in question, the war of words is wont to have recourse. Those which I have in view rank under the general name of *fallacies*.

By the word *irrelevancy*, may by far the greater number of them be designated: be the measure on the carpet what it may, they are *irrelevant* to it: they bear no particular relation to it: and of these irrelevancies, *personalities*, of which there are also various kinds, form no inconsiderable part.

Impracticable and *mischievous* — *mischievous* and *impracticable:* this is the conclusion on which, be the measure what it may, opposition is apt to begin or end. In the course of my own observation, to what multitudes of measures have I not seen them applied! — measures, of which the utility has afterwards been certified by unquestioned experience.

On the present occasion, the essential thing is — to engage your attention to the nature of the *particular object*, to which, if at all, these epithets will have to apply. It is nothing more than this: — in relation to the proffered body of proposed law, on the part of the house of representatives, a *resolution*, engaging them to receive it, and take it into consideration. This done, and the work received — and, on any one day, taken into consideration accordingly, — the very next day, if not approved of, the whole together may for ever be put aside.

This done, all is done for which I stipulate. To say what mischief can ensue from this, seems not to be a very easy task. In the event in question, the natural course for the Assembly to take would, I suppose, be — to order the work to be printed for the use of the members. But in this case there would be expense: — an expense, to which, if, in the eyes of those to whom it belongs to judge, the work affords not an adequate promise of being useful to their constituents — those same constituents should not, by any act of their representatives, be subjected.

To no such expense, however, do I call upon the representatives of any State to subject their constituents. On the contrary, without any expense to them, other than that of conveyance (this being without the reach of any calculation of mine) I hereby offer to present, to the representative body of any State, a number of printed copies exceeding that of its members: the copies to be delivered here in London, to any person commissioned by the competent authority in the State to receive them; reserving to myself only the right of reducing the number presented to each, should this offer find acceptance at the hands of more than one.

In return, no such State will, I hope, grudge me the present of a printed *almanac*, — or by whatsoever name the work be designated, — by which, if any such thing be in existence, the *official establishment* of the State, with the expense belonging to each of the several situations contained in it, is brought to view. My wish is, in the most detailed and demon-

strative manner, to contrast the principles and practice, in so exemplary a degree established in your happy commonwealth, with the system of regulated ———, which is here called *government*:—with the waste and corruption that characterizes the system of that government; and which, every time I think of it, fills my mind with a mixture of shame, and melancholy, and indignation.

LETTER VII.

Testimonies, as to the Species of Work here offered, and its Utility.

At the outset I submitted to you, my friends, some testimonies in favour of the present proposal and its author. The time is now ripe for adding to them a testimony or two in favour of the *work*. I mean the *species* of work: testimonies, by the light of which, — even supposing the execution ever so much inferior to what I cannot but flatter myself you will expect to find it, — you will see, in the very nature of the work, how much you have to hope from it.

Of these testimonies, the body of statute laws, established in France by *Napoleon*, is the main source. They consist, in the first place, in the recognition made of the utility of the species of work by the *restored* authorities: and this, notwithstanding the inferiority of the individual work, in comparison with that, of which, in case of acceptance given to this my offer, you cannot but stand assured: inferiority, and that, as you will see, rendered palpable by reference made to those objects, which, in the composition of a work of this species, I hope I may now say ought indisputably to be in view; viz. the *three qualities*, of which, in the third, fourth, and fifth of these letters, so particular an explanation has been given.

To come to particulars. In France, there you may see they not only had, but still have, the *Corps de droit Napoleon:* the body of law, designed probably to cover, when completed, whatsoever portion of the field of action was intended to be covered by law; and actually comprehending codes more than one, and of the three main branches actually covering two; viz. one, called the *Civil* or *Code Napoleon*, — another, called the *Penal*, together with the corresponding Codes of *Procedure*; not to speak of the *Code de Commerce*, and others branching from those two, or coming within the field of a *Constitutional* Code. Now then — be it as it may, in regard to the *individual* works — such in this instance was the *sort* of work — so great the benefit acknowledged to be derived from it — so great the mischief that would have been produced by the restoration of the chaos to which they succeeded, — so it is, that the restored authorities, on their restoration, — notwithstanding the intensity of their desire to obliterate, as far as possible, every trace of the intervening changes, — felt the necessity of abstaining, and abstained accordingly, from the destruction of this the most important of them all: — this vast remaining monument of now extinguished power and energy.

With whatsoever horror the government of Napoleon, considered in a constitutional point of view, may, by so large a proportion of the thinking part of the population of that state, be regarded; — by some, in respect of the damage to the interests of the ruling few — by others, in respect of the injury to the interests of the subject-many, — scarcely should I expect to find a Frenchman, of any party, to whom the reality of the service done by this work, to all interests, would be spoken of as matter of doubt.

The service thus acknowledged to have been rendered, in what then can it be found to consist? in which of the *three* capital *qualities* herein above brought to view?

1. Not in intrinsic aptitude for *notoriety*, as explained in my letter on that subject: not in intrinsic aptitude for notoriety, except, in so far as is necessarily included in the substitution of real to imaginary law: an advantage which belongs to the next head.

2. Not even in *completeness:* in advance made, as above, *towards* completeness, yes: but nothing more. No such idea brought to view, as that it would be possible, by any survey taken of the *field of thought and action*, to trace out the portion which it might be proper for government so to take possession of, as to convert it into the *field of law*.

3. Not in any degree in *justifiedness*, as above explained.

That, in respect of *intellectual aptitude* and *active talent*, it was not in the power of the draughtsman employed by Napoleon to give those qualities to their respective works, might be too much for a rival to take upon himself to pronounce: those to whom it belongs to judge, may judge. But, that the necessary *political power*, and consequently the *will*, so to do, was wanting to them, may without hesitation be affirmed. In every explicit *reason*, attached to any expression of his *will*, Napoleon would have seen a chain — a chain put upon his *power*.

Not even to any arrangements, if any such there were, in the penning of which he had no other end in view than the furtherance of the universal interest, would he have suffered *reasons* to be held up to view. Why? Because, if introduced into *any one* part of the whole body of law, the operation of *giving reasons* would naturally have been looked for, in the instance of *every other:* but, in the instance of no part of any body of law, in and by which a sacrifice is purposely made of the

universal interest to the particular interest of the *ruling one*, or to that of the *ruling few*, can any appropriate and adequate body of reasons be found — any body of *reasons* that, — if not of and in itself, — at any rate by the observations it would call forth, would not in effect counteract the design that gave it birth.

To the ruling power, in every government but such as yours, every application thus made of the faculty of reasoning is therefore, in the very nature of the case, an object of horror. It is, and will ever be so, in every pure monarchy: it is, and ever will be so, in every aristocracy: it is so in this government, which, in substance and effect, is become a compound of monarchy and aristocracy: of monarchy and aristocracy, with a thin coat of democracy remaining on the surface, sufficient for the delusion, but not sufficient for the protection, of the people.

You have been seeing what everybody has seen — what the *Cromwell of France* actually did for *France*. Behold now what, if life had been long enough, the *Cromwell of England* would have done for *England*: —

In a conversation with Ludlow, Cromwell said, "That it was his intention to contribute the utmost of his endeavours to make a thorow reformation of the clergy and law: but," said he, "the sons of Zeruiah are yet too strong for us: and we cannot mention the reformation of the law, but they presently cry out, we design to destroy propriety: whereas the law, as it is now constituted, serves only to maintain the lawyers, and to encourage the rich to oppress the poor; affirming that Mr. Coke, then Justice in Ireland, by proceeding in a summary and expeditious way, determined more causes in a week than Westminster-Hall in a year; saying farther, that Ireland was as a clean paper in that particular, and capable of being governed by such laws as should be found most agreeable to justice; which may be so impartially administered as to be a good precedent even to England itself: where, when they once perceive propriety preserved at an easy and cheap rate in Ireland, they will never permit themselves to be so *cheated and abused* as now they are." *

Behold what was said in his day by *Cromwell!* In my eyes, it ranks that wonderful man higher than anything else I ever read of him: — it will not lower him in yours.

As to the *clergy*, in your happy country the reformation has already been effected. Remains as and for the only class, in the instance of which any the least need of reform still remains — the class of *lawyers*. That, in your country, in comparison of what it is here, the quantity of abuse issuing from this source is in no small degree inferior, I am fully sensible: but, so long as any the least particle of mischief, though it were but a single one, is perceptible, why it should continue unexcluded, — unless by the exclusion put upon it, a preponderant mass of mischief can be shown to be let in, — remains for him to say, who to the desire, seems to himself to add the power, of rendering to his profession and its interest so acceptable a service.

In this same volume (i. p. 436) the last paragraph is in these words: — "In the meantime the reformation of the law went on but slowly, it being the interest of the lawyers to preserve the lives, liberties, and estates of the whole nation in their own hands. So that upon the debate [on the subject] of *registring deeds in each county, for want of which, within a certain time fixed after the sale, such sales should be void, and being so registred, that land should not be subject to any incumbrance;* this word *incumbrance* was so managed by the lawyers, that it took up three months' time before it could be ascertained by the committee."

Thus, by the particular and sinister interest of the lawyers, was the reformation of the law obstructed. From the same honest pen, behold how, and by the force of what sinister interests, so desirable and admirable an enterprise was soon afterwards finally quashed (ii. 717:) — "The Parliament, on their part, being sensible of their danger" (viz. from the army: this was the latter end of 1659,) "were not wholly negligent of the means to prevent it: though I cannot say they gave no advantages to the faction of the *army*, by disgusting the sectarian party, *and falling in with the corrupt interests of the lawyers and clergy*, wherein the army did not fail to outbid them when they saw their time."

The provocation given by the honest lawyer (I mean *Chief-Justice Coke* — not the rapacious pedant, *Sir Edward* — but one whose conduct formed so perfect a contrast to his,) — the provocation — I say the provocation, given by this honest lawyer to his brethren of the profession — being thus great, you will not wonder when you find it productive of an adequate resentment. From the same pen hear an account of this reformist's end (ibid. iii. 75:) — "An order being made, that the Chief-Justice Coke and Mr. Peters should die on the same day, they were carried on two sledds to the place appointed for the execution of the sentence that had been pronounced against them, the head of Major-General Harrison being placed on that which carried the Chief-Justice, with the face uncovered and directed towards him: which was so far from producing the designed effect, that he not only seemed to be animated with courage from the reflection he might make upon that

* Ludlow's Memoirs, i. 319; i. 430; ib. iii. 75. Coke's Execution, ib. ii. 717.

object, but the people every where expressed their detestation of such usage." At the place of execution, among other things, he declared, (p. 196) "that *he had used the utmost of his endeavours that the practice of the law might be regulated, and that the public justice might be administered with as much expedition and as little expense as possible; and that he had suffered a more than ordinary persecution from those of his own profession on that account.*"

Thus far honest *Ludlow*. Beholding what, in England, not only our unambiguously true commonwealth's men, but even our *Cromwell* would have done,—you have beheld the *ends* which he would have had in view in doing it. But if, in the conception formed by him concerning what would eventually take place in England, he was correct,—you will see how different a sort of thing the spirit of an Englishman was in those days from what it is at present. Supposing substantial justice established in Ireland, the English of those days would no longer (he concludes) continue to permit themselves to be so "*cheated and abused by the lawyers*," as they then were. No: not if a hand such as his—(for to representative government Cromwell was not, like Napoleon, an enemy, but a friend)—No:—not if a hand such as Cromwell's had remained to do its part, towards freeing them from that bondage. But now that, between the S—s, the E—s, and the W—s,—between those who rule by fraud and those who rule by force,—the contract has been completed, the connexion is indissoluble. The spirit which in those days animated the English is no more. We are content to be "*cheated:*"—we are content to be "*abused:*"—all security is fled from us. I, for example, who am writing this to you, I am at this moment in my workshop; to-morrow I may be in a dungeon: not only friends and books, but pen and ink, kept from me—my small remnant of existence rendered at once a blank and a burthen to me,—lest these my labours, which here are useless, should elsewhere be of use. Yes: all security has fled from us: and not only the security itself, but all regard for it.

No tyranny, under which we are not prepared to crouch, so long as in England, under the ——,*— as at Rome, under the *Cæsars*,—the forms of the constitution under which it is exercised are, some of them, preserved: so long as the selfish idlers, by whom we are scorned and pillaged, condescend to style themselves our —— ———,—we care not how gross nor how notorious the falsehood is, which in that denomination is involved.

Now, suppose that, at this advanced period,—at the presentation of anybody, authority were given in your country,—and *that* with the happiest success,—to a complete body of laws; such as,—according to the character ascribed by the effrontery of lawyers to the reigning mass of pernicious absurdity,—has, by the testimony of experience, been proved to be the very "*perfection of reason.*" By that character would it in this country stand recommended to the ruling powers? No:—the more thoroughly would they have been convinced of its having an undeniable title to that same character, the more cordially would they abhor it: the more intensely, according to the humour of the moment, would they either dread or scorn it.

LETTER VIII.

Conclusion. Advantages—Exhortations—Prospects.

In a general point of view, you have seen, my friends, the state which the rule of action under which you live is in, *at present:* in the like point of view, you have seen the form which it is *proposed* to give to it.

Turn now to your own condition under it. Consider what it *is* under the law as the law is: consider what it *would be* under the law, as it is proposed the law should be.

1. In respect of *notoriety*, at present,—unless here and there a lawyer be an exception,—scarce any part of the rule of universal action correctly known to anybody. 2. In respect of *completeness*, a vast portion of it—no one can say how vast—a shadow without a substance; the deficiency of real law being, under a fictitious name, and under false pretences, supplied by *unconjecturable will*, supported by *arbitrary power*. 3. In respect of *justifiedness*, i. e. *proof of reasonableness*, no proof or test, in any quantity or *quality*, worth mentioning, to be found anywhere: in the only *really existing* branch of the rule of action, viz. *statute law*, absolutely none: in the argumentation, mixed up in the *imaginary* branch, in which, under the name of *law*, nothing better than *matter of conjecture* about what is or ought to be law is to be found, here and there indeed a spice of *reason:* but this in so confused a state, and mixed up with such a dose of absurdity—especially of the technical and antiquated cast—that, in no tolerably adequate degree can any one of the functions,—herein above spoken of as exercisable by a consistent and co-extensive body of *reasons*, forming an accompaniment to the proposed body of *ordinances*,—be found performed by it.

Under the system of arbitrary power thus endeavoured to be disguised, observe then, my friends, what your condition is. Under a system of *statute law*, suppose it complete, as often as, having in contemplation a certain

* These blanks have been left by the printer. [*Note to 1st edition.*]

act, it becomes your desire to be assured what, in the event of your doing it or not doing it, will be the treatment you will receive at the hands of the judge — under such a system, on turning to the appropriate part in the books of the law, the information requisite is yours. All plain reading: no guess work: no argumentation: your rule of action — your lot under it — lies before you. Thus might it be — thus ought it to be. As it is, how is it with you? No plain reading: all guess work. On every occasion, how, in the event of your doing or not doing what is in question, the judge will deal by you, is mere matter of conjecture: and, for aiding you in your conjectures, no materials, no documents, have you — within your reach, or at your command.

Such is the state of uncertainty — such, therefore, the insecurity— in which you live: such the imposture, on the fruit of which everything that is dear to you remains at all times dependent.

Now, suppose a complete body of *statute law*, as proposed, established; all judicature, carried on under the pretence of judging according to *common law*, excluded: suppose this, and note well the difference. Suppose not only the original scribe ill-qualified, but even the censors and correctors of his draught, all of them, worse qualified than in the nature of the case your legislators can be, — still would your condition be a state of certainty and security, in comparison of what it is at present. Throughout the whole field of action you would have a real, and no longer any imaginary, *standard of reference:* throughout would your *actions* have a real, and no longer a mere imaginary *rule*.

Under a complete system of *statute law*, supposing it ever so bad, thus improved would be your condition, in comparison of what it is at present.

But, supposing this offer accepted, the body of laws, is it then in any danger of being thus bad?

To the purpose of security against badness in every shape, instead of being the original and principal part of it the work of foreigners, executed in other times,—it will be, the whole of it, the work of your own ordinary servants, executed under your own eyes. Of this work, whatever there is that has difficulty in it, or requires labour, will have been ready roughed out to their hands, by this your supernumerary servant: for each and every distinguishable portion of it the *reasons* will be before them: on the whole, and each particular part, — *ordinances* and *reasons* taken together, — their province will be to decide: to take whatsoever parts of it it seems good to them to take; to reject whatever parts of it it seems good to them not to take: to insert into it whatsoever matter it seems good to them to insert.

Suppose the whole of it disapproved, and accordingly rejected? You are but where you were. You have everything to hope — you have nothing to be apprehensive of.

Suppose it approved and established, behold the fruits and consequences. For a *rule of action*, instead of a rule made by *foreign* hands, you will have one — as large a part as you please — made, all of it improved and finished, by the hands of your own agents, under your own eyes. Instead of a shapeless and boundless mass of *argumentation*, you will have a compact and orderly body of *law;* instead of *spurious* matter under the name of law, you will have *genuine* and real law. In a word, instead of a boundless library, and that an inaccessible one, — you will have, for constant use, a few sheets; for incidental consultation, a few volumes: — instead of uncertainty, you will have certainty, — instead of insecurity, security and inward peace. On this great occasion, in this your proffered servant, what confidence will you have reposed? None whatever. In the already commissioned servants of your choice, in those in whom you are accustomed to repose it —in those alone, on this occasion as on all others, will your confidence have been reposed.

Do you still hesitate and look for *a precedent?* So far as concerns the exclusion of common law, you have one already in your own acts.

You have your *constitutional* law: you have that branch of it, in and by which are brought to view the *powers* exercised, with the accompanying and correspondent *obligations*, submitted to, by the several official persons, of whom, from time to time, the governments of your several *States* are composed; together with the modes, in which the several official situations, occupied by these several individuals, are *filled* and *emptied.* You have that branch of it, which regards the powers and obligations of those official persons, by whom the affairs *common* to *all* those States are conducted. To the value of this *constitutional* law of yours, you are none of you insensible. You hug it to your hearts, as the main source of, and security for, whatsoever you enjoy. Well then: *statute law* — *real* law — such is the state, which this branch of your rule of action is in, every tittle of it. Think, now, how it would be with you, if *this* too were in the state of *common law;* — of common law, spun, — all of it hitherto, and upon each occasion more and more to be spun on in future, — out of *our* common law, — as are, at present, the *penal* and the *civil* branches? Of the whole body of the laws — of the three branches, into which it is divisible — having thus, in the state of a compact and regular structure, this *one,* — how much longer will you endure to see every *other* in

the state of a boundless and ever-increasing chaos?

Bad enough is it, in *any* country, to *any* sort of people, on each occasion, to have to hunt for the rule of action, in the breath of no one knows what individual, with or without a lawyer's gown upon his back: an individual of whom thus much only is known, viz. that, even if he had — which he never can have — the *inclination*, — he would not have the *power* — he would not have the *means* — the means in any shape — to make it fit for use.

But in *your* land of freedom and good government — to *you* and *your* legislators, freely deputed agents and servants of a free and self-governed people — thus to be perpetually on the hunt for law — thus to have to rake for it in the very sink of corruption — thus blindly to keep on importing a succession of deaf and dumb matter from a country of slaves — what is this but treason against your constitution?

Yes, my friends, if you love one another — if you love each one of you his own security — shut your ports against our *common law*, as you would shut them against the plague. Leave us to be ruled — us who love to be thus ruled, leave us to be ruled — by that tissue of imposture: leave us to be ruled, by our gang of self-appointed ————: by our lawyer-ridden, by our priest-ridden, ————: leave us to be ruled, by those ———— who never cease to call upon us to rally round our ————, — that poisoned and poisonous ————, by the *name* of which they have made us slaves.

No: never, never let slip out of your mind this lesson — *wheresoever common law is harboured, security is excluded.*

The yoke of English monarchy — the yoke of English aristocracy — the yoke of English prelacy — all these galling yokes — all these mutually interwoven and now foreign yokes — you have happily shaken off. Remains the yoke of the English *Eithersides*, exalted into judges: the *common law* — that tissue of imposture, to which you still continue to yield your necks, — to be pinched and galled, under the hands of one class among you, for whom, while they are comforted, all others are tormented. Day by day it continues, — and, so long as you continue to crouch under it, will continue, — to be more and more bulky — more and more afflictive — the pressure of this yoke. Will you repel — will you suffer to be repelled — the hand that offers — the only hand that ever did offer — to relieve you from it?

Taking the whole of the field together, either the conception formed of it by this your proffered helper is more *clear*, *correct*, and *complete*, than any that can have been formed in relation to it by any one of you, — or his time, to the amount of above half a century, will have been very unprosperously, very unprofitably, expended. But, this expenditure once made, — of *his* conceptions whatsoever, in regard to each part of that same field, may be the *clearness*, the *correctness*, the *completeness*, — by *your* conceptions, your position considered — by *yours*, on a great many points, at the first glance, will *his* of course be exceeded: sooner or later, so will it be of course throughout: — in the career of improvement, *you* will each of you begin at the point at which *he* ended.

Not that, at the end of any length of time, there must of necessity be, in every part, room and demand for change; for, in any instance, suppose that which is best once discovered, and the nature of the case not changed by time, no room for any thing better is any longer left. But as, on the one hand, whensoever you *adopt* a proposed change, you will, I am confident, have some better reason for doing so than that it *is* a change; so, on the other hand, whensoever you *reject* a proposed change, if so it be that the change affords a promise of *improvement*, much more if of *reform*, — if, rejecting the change, you keep to what is established, you will have some better reason for keeping to it than that it *is* established: some better reason than the *wisdom of our ancestors:* that wisdom which, being interpreted, is neither more nor less than the weakness of the cradle: that wisdom, the worship of which is so readily and extensively joined in by fools and knaves. Yes: if peradventure so it should happen, that, after having been sanctioned by your representatives, any ordinance, originally submitted to their consideration, by this your proffered helper, shall continue to stand approved, — the approbation, he trusts, will have for its cause the goodness of the *reasons* in which that ordinance found its support, not the earliness of the age in which *he* lived.

The effectual point is — that, at the hand of your representatives, the *plan*, the *form*, the *outline* of the work, should find acceptance. Among its objects is, — and, if accepted, among its effects will be, — the affording to them, and through them to you all, my friends, the greatest possible facility, for giving establishment, and thence effect, to whatsoever, to them, and thence to the majority of yourselves, shall, on each occasion, and from time to time, seem best. Yes: in this one frame, matters, — of a nature the most opposite, to that which, on each occasion, will to me your workman, have seemed best,—may, according to the successive suggestions of maturer reflection, and of increased experience, by the light of nearer and closer observation, be inserted: what I would punish, they, and through them you, may leave free, or even reward: what I would reward, they, and through them you,

may leave unrewarded, or even punish. Yes: by any acceptance given to my work, your powers, so far from being narrowed, will be enlarged. In the reasons, and the principles on which they are grounded, you will behold at all times the inducements which led to the proposed ordinances to which they are subjoined: in so far as in your minds those reasons shall have made the same impression as on mine, you, by the hands of your agents, will give acceptance to the ordinances thus suggested; — in the opposite case, striking out what you find inserted, you will either leave the space a blank, or insert whatever else may seem best in the room of it. *Power* over you, or any of you, I cannot have any — I *would* not have any: — upon your *wills*, only through the medium of your *understandings* can I exercise any the least influence. Yours is the *interest*, and the only interest, at stake; upon each article of proposed law, yours is the judgment, which in each case will ultimately decide.

Whatsoever portion of the work, if any, may, after due consideration applied to each part, have been ultimately approved, — the matter of it may serve, at any rate for a sort of temporary *resting-place*, to the minds of your representatives: coming from a pen, which cannot have found any sinister interest to misguide it, — and after a length of reflection, greater than any which can have been bestowed upon it by any one of the greater part at least of your representatives, — whatever risk you will run, by giving it a sort of provisional and temporary acceptance, can surely not be very formidable: especially considering that, in whatsoever regards *possessions*, the keeping them inviolate will be the leading object which, as I ever have had, so I ever shall have, constantly in view.

Whatever be the opposition made to the preliminary measures thus proposed, one consideration there is that puts in an irresistible claim to notice.

Whoever, speaking of an undertaking of this sort, takes upon himself to say *it ought not to be commenced now*, should be prepared to show, that it ought never to be commenced *at all*. By every day of delay, increase will be given — on the one hand to the magnitude of the evil, on the other hand to the difficulty of applying the only remedy.

I. *As to the magnitude of the evil.* The evil, as you have seen, consists — in the first place in the *uncertainty* of the rule of action, and thence in the *insecurity* of those whose fate is disposed of by it. Of this evil, as far as regards *statute law*, the source lies in its *voluminousness* and *want of compactness:* in so far as regards *common law*, in the same imperfections, existing in a prodigiously greater degree, with the addition of that *immensity*, by which it is rendered impossible for any man to know whether he has the whole of it, and that *indeterminateness*, by which it is rendered impossible, as to so much as any one particle of it, to know, whether it *is* or is *not* law; whether it is or is not a rule, or part and parcel of a rule, by which the decisions of the *judiciary*, and with them the fate of those individuals whose case comes before the *judiciary*, will be determined.

Well then — not to look to fractions of time — where is — where ever can be — the *year*, in which any one of these sources of evil — *voluminousness, uncompactness, immensity, indeterminateness* — shall have failed to bring forth its increase.

II. *As to the difficulty of applying the remedy.* — In a work of this kind, the grand point upon which the difficulty turns is — the having a ground for working upon — an *outline*, within which the whole field of the subject shall be comprehended; an *outline*, — and that traced by a hand, of the competency of which, with reference to the sort of work, there not only shall be, but shall be generally known to be, sufficient reason for entertaining a favourable presumption. I say *a* hand; — observe, a *single* hand: for, in the first instance, thus produced must every work of the sort in question be, or it can never come into existence.

Now, then, at the present instant, so it does happen that, by a conjuncture of circumstances not very likely to be soon again conjoined, a hand has been brought into view, the whole working time of which — and that already not a short one — has been devoted to the endeavour to render itself, with relation to this same business, a competent one. Suppose, then, the offer from this hand rejected, — others, affording equal promise, are they likely soon to be seen presenting themselves? Surely, to say within what time any *one* such shall be likely to present itself, will not be a very easy task. This first offer rejected, what prospect of acceptance can, at any future period, present itself to any others of the same complexion? Rejection, in such a case, would it not in effect be tantamount to one or other of two resolutions; viz. either, 1. That the disorder shall continue increasing, so long as the state continues in existence? — or, 2. That the work, whenever executed, shall not be executed in a manner so good, as that in which it might be executed at present?

Whatever be the task in question, — for aptitude as to the execution of it, one security there is, of which the efficiency is indubitable, and *that* is — a relish — a real liking for the work. Of this qualification at least, whatsoever may be the value of it, in the present instance, there will not be much room to doubt. Suppose it wanting, the labour thus bestowed is an effect without a cause.

Utility, notoriety, completeness, manifested reasonableness—of a body of laws,—endowed with all these attributes, each of them in the highest degree, and operating upon the largest scale, — the existence, supposing it realized, will indeed be a new æra in legislation.

Only at this late period — only at this advanced stage in the career of civilization and mental culture — could so much as the idea of any such work have been brought to view. A sketch of a code of laws, upon a comparatively extensive scale, was brought forward by *Lord Bacon*, and may be seen in his works. So far from *all four*, scarcely of any *one* of these qualities, is any tolerably *clear* conception to be found in it.

A complete body of law (for the sake of finding for it a single-worded name, — let us, until a better can be found, go to the Greek for one, as botanists do for their flowers, and call it a *Pannomion*) — a *pannomion*, then, if you please, furnished with all these desirable qualities — and in that condition established by competent authority — be it but once exemplified, though it be but in the instance of one single State, — sooner or later, where there is any the least spark of freedom, a man will not for very shame venture, in the same field, to produce a work to which these qualities — every one or even any one of them — are wanting. At present, works thus unworthy of a moral and intellectual agent are produced without shame, because nobody is ashamed of doing that which is done by everybody. Be the sort of work what it may, so long as nothing of the sort has ever been produced, the impossibility of producing any such thing will without scruple be asserted: asserted,—and, the more vehement the assertion, the more profound the wisdom, the reputation of which will be claimed upon the strength of it.

Thus would the matter stand at present: such would be the reception given in the first instance to a work of this kind. Suppose it an all-perfect one, such would be the reception given to it, by those whose interests, or interest-begotten prejudices, would be thwarted by it: — given to it, till, after having received somewhere else the touch of the sceptre, it had stood for a while the test of experience.

Let but an exemplification, however, once appear — *an* exemplification, though it be but *one* — down goes the pretended impossibility; down the impossibility, and with it that reputation of wisdom, which has for its foundation the mixture of stupidity and arrogance.

In this way it is — that, by the influence of understanding upon understanding — by the force exercised by reason upon reasonable minds — let but *one* of your *twenty* states give acceptance to a body of laws endowed with all these *qualities*, — by that *one*, sooner or later, will it be forced upon the *others*—forced upon them *all*, though by the gentlest of all pressures.

In America thus will *reason* spread her conquests. As for that quarter of the world, from which shame is banished — in which, in the name of Christ, the *subsistence* of the *subject many* is, with such indefatigable devotion, made a constant sacrifice to the *luxury* of the *ruling few* — in which all men are governed, by those who, feeling themselves, are determined to keep themselves, their enemies; — in which that which calls itself *government* is but a system of *regulated pillage;* — in *that* quarter of the world, by no such Utopian conquest, will its tranquillity, and that sort of *order* which calls itself *good order*, be disturbed.

On the ground of *constitutional* law, the system of law you have already — you, who on that ground have so nobly shaken off the yoke of *English* law — the system you have already, is, as to all essentials, a model for all nations. Accept, then, my services, so shall it be on the ground of *penal* law, so shall it be on the ground of *civil* law: accept my services, at one lift you shall ease your necks of that degrading yoke. Without *parliamentary reform*, Britain cannot, — without revolution or civil war, no other monarchy can, — take for a model the essentials of your *constitutional* law: but, on the ground of *penal* law, and to no inconsiderable extent, even on the ground of *civil law*, it might — and that without change in any part of the constitutional branch, — be made use of as a model anywhere: in *Spain*, in *Russia*, in *Morocco*. Hence it was — and without any thought or need of betraying him into any act of self-denying beneficence — (for my views, of the *contagious* influence of *reason* in the character of a *precedent*, were not at that time so clear as they have become since,) — hence it was, that these my services were offered to the *Alexander* of these days.

Yes, my friends — these labours of mine — labours which of *themselves* are nothing — dreams of an obscure individual — let them but be accepted by *you* — you shall be a people of conquerors. Conquerors, and with what arms?—with the sword? No: but with the pen. By what means? — violence and destruction? No: but reason and beneficence. As this your dominion spreads, — not tears and curses, but smiles and blessings, will attend your conquest in its course. Where the fear of his sword ends, there ends the empire of the *military* conqueror. To the conquest to which *you* are here invited, no ultimate limits can be assigned other than those which bound the habitable globe.

To force new laws upon a reluctant and abhorring people, is — in addition to unpunishable depredation — the object and effect of vulgar conquest: to behold your laws not

only accepted but sought after — sought after by an admiring people — will be yours.

To those conquests, of which slaughter is the instrument, and plunder the fruit, — the most brutal among barbarians have shown themselves not incompetent. By the best instructed minds alone can any such conquest be attained, as that to which *you* are here invited.

" Stranger!" say you, " why thus pressing? — pressing, and for labour without hire?"

Friends (say I) *your comfort* would be *mine*. Your *conquests* — the conquests I have thus been planning for you — these indeed I cannot live to see. But of your *comfort* — your internal comfort — the increase of comfort I have been speaking of — of this scene, to the eye of a sanguine and self-flattering imagination, a sort of *Pisgah* view is not impossible. My last hour cannot be far distant: this is the preparation I am making for it: by prospects such as these, if by anything, will it be sweetened.

To the Almighty I must confess I know not how to render myself anything better than an " *unprofitable servant:*" as to what concerns my fellow-men, I am not without hope.

P. S. — 22d JULY 1817.

What follows is an afterthought, — and, had it occurred in time, might with more propriety perhaps have been addressed to the several situations, of your *governors* and your other *official servants*, than to yours. Of such of my works, as, according to my recollection, had ever been in print, a list is subjoined to the above-mentioned " *Papers relative to Codification and Public Instruction*," a copy of which has been sent, as above, to the governor of each State. Taking in hand an almost forgotten portion of the earliest of those of my works that were published in French — works, no one of which has ever yet seen the light in English, — I find in the first of its three volumes, an Essay in 227 8vo. pages, intituled, " *Vue Générale d'un corps complet de Legislation*," — *General View of a complete body of proposed Law*, — published so long ago as 1802, — known more or less in every country of Europe, — Russia, where it has received two translations — Russia, and even Spain itself, not excepted, — never, in the language which gave it birth has it yet seen the light. Among those within whose field of study a work on this subject is included, — so small has been the number of those to whom it would not be sufficiently intelligible in French, — that by no bookseller has it been found worth while to call for an edition of it in English. In America, however, what strikes me is — that, in any State, if any such there be, in which this my offer shall have found acceptance, — a translation, of this part at least, for the use of the legislature of that State, might form a not unuseful prelude, — or, in case of death, a succedaneum, — to the work, which, in the case supposed, I should take in hand.

Farewell at length, my friends! — Judge, whether if employed by you, or for you, I should ever fail of being, your affectionate and faithful servant, JEREMY BENTHAM.

P. S. — 26th AUGUST 1817.

Though without the permission or privity of my friend, — the facts not having anything of secresy in them, nor anything but what does honour to all parties, — I trust I am not misusing his confidence, in giving in English an extract from a private letter of his to myself, dated Geneva, the 12th instant: —

" *News about the Code.* — August 9th, Third meeting of the commissioners. Question — to adopt, or not, the bases of the plan I had proposed: the bases merely; without notice taken as yet of the details: that is to say, the great division into general titles, private offences, public offences: proceeding then with the *definition* of each offence, the *exposition* of the terms of the definition, the *punishments*, the *causes of aggravation*, with the corresponding *extra punishments*, the *causes of extenuation*, with the corresponding *reductions in the punishments.* Setting out from the French penal code, under which we have been living these twenty years, — understand that our commission contains, amongst other members, three judges, and two advocates, all practised in these French forms; none of them young — none of them to whom the study of a new code could, naturally speaking, be a very palatable one. Think of this, and then think, whether it could be altogether without apprehension that I had been looking for the result of this meeting. A month had been taken for their examining, each by himself, the general plan, together with divers articles, which, to serve as examples, I had subjoined to it. The meeting immediately preceding the one in question had, on my part, been employed throughout in stating reasons, and answering objections: and, when it broke up, I was not without my misgivings about the sort of impression that had been made. Well: — the next day but one, viz. yesterday, the plan was adopted: — adopted unanimously — and myself invited to pursue it." (Vide p. 479.)

No. IX.

Jeremy Bentham to James Madison, late President of the American United States.

SIR, — Length of intervals considered, our correspondence has been better suited to an antediluvian life, than to one which is so

near its close as mine is.* I mention this — not in the way of reproach to yourself, from whom at no time, to such an address as mine, was any answer at all matter of debt, but purely in the way of regret on my own account. Two works of mine — not to mention a number of others begun, continued, or ended, — two works in particular — one, a continuation of Chrestomathia — the other, on Parliamentary Reform — both of them calling irresistibly for dispatch — will help to plead my excuse.

Your letter announced an approaching present: a present of appropriate books:—some unknown accident has yet deprived me of it. Since then, I have had to return, as I did with all due respect and gratitude — to return as soon as received, and without staying so much as to look at it, the present of an emperor. Come when it will, I shall not return yours.

The emperor's would have been of no use to me. What the pearl was to the cock, such the diamond would have been to me. Coupled with those declarations, of the sincerity of which it affords an additional assurance, and with that testimony, the weight of which no part of the civilized world can help recognizing, the bare announcement of yours confers on me a title of honour: a title altogether apposite, and which no herald can tear from me or deface. Of all men in Europe, I am then, in your declared opinion, the man best qualified for the drawing up a complete body of laws. I rejoice to find it so. Why? Because by this means I obtain the fairest chance, which, from any one hand, I could have received, for the being enabled to render to mankind that service, the endeavour to qualify myself for which, has been the great business of my life.

It will find you — this my second letter — in possession of comparative leisure, reposing upon your laurels: your country deprived, for a time at least, of the continuation of your services in that particular shape in future, though it neither is, nor, so long as it exists, will be, deprived either of the fruits of those services, or of the grateful remembrance of them.

In print, if in any shape, will it meet your eye: in the same shape, and at the same time, my first letter once more, and with it that letter of yours by which I was so highly honoured. *Apology* you will require none: *reason* makes sure of acceptance at your hands. By this publicity, though no licence for it has been obtained, no confidence is violated: neither does the subject, nor do our relative situations, admit of any demand for secrecy. A letter from the President of the American United States — a letter from such a quarter, and such a letter — could no more have been intended to sleep on the shelf, than a ribbon with a star to it, to lie for ever locked up in a wardrobe.

I proceed to business. Speaking of my "thoughts" on the subject of a complete code of laws, "although we cannot avail ourselves of them in the mode best in itself, I do not overlook" (say you) "the prospect that the fruits of your labours may in some other not be lost to us: flattering myself that my silence will have nowise diverted or suspended them, as far as the United States may have a particular interest in them."

To this surmise, Sir, the result has not proved conformable. To the production of the *service* — if by that name I may venture to designate it — to the production of the *service* proffered, the *pay* required in advance for the purpose of encouragement was altogether necessary: the cause failing, the effect failed with it: — *alacrity*, in sufficient quantity, could not be summoned up. From the *President* of the *American United States*, a word would have sufficed to command — and for the remainder of his life — in this highest of all temporal fields, the labour of an Englishman: — an Englishman of whom, — even in his lifetime, and notwithstanding the prophecy, — in his own country, as well as in other countries beside his own, it has, even in the highest situations, been every now and then said, that his labours in that same field have already been not altogether without their value. Of the one word needed, political propriety, it seems, forbade the utterance: pronounced as the decision has been, by so completely and exclusively competent an authority,—the sentiments of regret, of which it could not but be productive, have had for their accompaniment no others than those of respect and acquiescence.

From a quarter, to which it was addressed without being exposed to the same causes of rejection, a subsequent offer of the same kind has been more fortunate. The same paper which conveys to you this address, will likewise convey to you the return made for a letter of mine to the governor of Pennsylvania: — made, in the first instance, by a letter from Mr. Snyder, governor of that State, and afterwards by a communication made by him of my offer to the legislature of that same State: both preceded by that letter of Mr. Gallatin, to which I can not but have been in great measure, if not altogether, indebted for so flattering a result.

Such is the state of things, in which I proceed to confess to you the consideration, which has given birth to the liberty I am now taking in addressing to you, in this public

* Date of Mr. Bentham's Letter to Mr. Madison, October 1811.
Date of Mr. Madison's Letter to Mr. Bentham, 8th May 1816.
Date of this Letter, September 1817.

manner, this fresh testimony of my respect. It is the desire of relieving the proposed undertaking, if it be in my power, from the force of those objections, which it finds opposed to it by the authority of your name: and which, bearing upon it from such a height, have, notwithstanding the softness of the language in which they are clothed, been felt acting against it with so formidable a pressure.

Before I state the objections themselves, permit me to make what advantage I can of the circumstance of *time*.

The *time*, at which they presented themselves to your view, was a time, at which the business of that high and most laborious office of yours was pressing with all its weight upon your mind. In that state of things my wonder is — how you could have found any consideration at all to bestow — to bestow upon an offer, the subject of which, — coming as it did in competition with the duties necessarily appertaining to that office, yet in its extent outstretching them all, — could not assuredly be said to have any obligatory claim on your attention, — rather than that the result of the quantity of attention, which you *did* find means to bestow upon it, was such as not to put at once a negative upon all ulterior consideration. Under these circumstances, nothing forbids my hope, that this appeal from Cæsar to Cæsar — from Cæsar unprovided, to the same Cæsar provided, with sufficient time for consideration, as well as means of information — will find the door completely open to it.

Under these circumstances, no wonder if, to a hasty glance, the extent and apparent difficulty of the undertaking being considered, the "*practicability*" of it should have presented itself to your mind as affording "*room for doubt.*"

Three distinguishable circumstances belonging to it are accordingly mentioned by you in that view, viz. on the one hand, the *extent* proposed to be given to the work: on the other hand, the scantiness of the quantity of "*space*," and the quantity of "*time*," supposed to be looked to by me, as sufficient for the execution of it. "The only room for doubt," say you, "would be as to its *practicability*, notwithstanding your peculiar advantages for it, within a space and a time such as appear to have been contemplated."

Postponing for a moment what it appears to me you had in view, in the use made of the word *extent* — on the subject of *time*, on recurrence to my letter (page 465,) I hope you will not find me speaking otherwise than with that degree of undeterminateness, the opposite to which would have been so unsuitable to the nature of an undertaking of this sort.

In speaking of *space*, if I do not misconceive you, what you had in view was, principally *quantity of matter; space* only as corresponding to the *quantity of matter*: viz. such portion of *space* as will be necessary, for the containing of such *quantity of matter* as shall have been found necessary.

Now, as to both these circumstances, no sooner do they come to be looked into with any degree of steadiness, than their incapacity of affording any material objection to the proposed undertaking will, I cannot but flatter myself, be found so clear and complete, that they may be laid out of the case almost at the first word: —

1. With regard to *time*, — supposing either the work to be useless, or the execution of it impracticable, all question regarding *time* is useless: supposing the work not to be useless, nor the execution of it impracticable, the answer afforded to the objection by the trivial adage, *better late than never*, will, I cannot but flatter myself, be found quite sufficient for the removal of it.

2. With regard to *quantity of matter*, — if, in the case of a work of the *sort* in question, the magnitude of this quantity be *not* regarded as capable of being productive of inconvenience, it cannot be capable of operating as an objection to any *individual* work of that same sort. If it *be* regarded as capable of being productive of inconvenience, surely the magnitude of this inconvenience will be more likely to be reduced, by a work having among its chief objects the reduction of it, than in a state of things in which no such endeavour has been, or will be, used.

For the expedients employed by me for this reduction, I will beg leave to refer you to Letter III. of those letters of mine to the citizens of your United States, which will be in circulation at the same time with this. These expedients, are they, any one of them, actually in use at present? In any of them, is there anything that is either useless or impracticable? To no one of these questions can I frame to myself any answer from you other than a favourable one.

Forget not here, Sir, let me entreat you, that from the not being provided with any determinate set of words for the expression of it, that portion of the rule of action which is in the state of *common law*, presses — not with the less weight, but with the more weight — presses, if not actually upon the *minds*, upon the *condition*, of those whose lot depends upon it. By giving to it a set of determinate words — that is, by converting it into *statute law*, — that which before was *infinite* is rendered *finite*. [See my first Letter, p. 460.]

These comparatively light considerations being thus disposed of, I proceed in my humble endeavour to solve that doubt of yours which, space and time out of the question,

respects the question of "*practicability*" absolutely considered.

"With the best plan for converting the common law into a written law, the evil," you say, "cannot be more than partially cured." What, on this occasion, was the evil in view, I do not find mentioned in express terms: but from the last preceding paragraph, what I should expect to find it to have been is — "the extent" of "the unwritten law." "With respect to the unwritten law," you say, "it may not be improper to observe, that the extent of it has not been a little abridged in this country by successive events:" whereupon you proceed to specify these events or some of them: viz. — the "emigration"—the passing of the "colonial statutes" — and "the revolution."

Having thus explained what in your conception the evil was, and, in relation to this evil observed — what at the moment seemed to you to be the case — viz. that it "cannot be more than partially cured,"— you go on and state what, at that same time, presented itself to you as the reason or cause of the supposed impracticability: — "the complex technical terms to be employed in the text necessarily requiring," you say, "a resort for definition and explanation to the volumes containing that description of law."

In this latter observation, considered in itself, I see nothing to controvert. But in the character of an argument, in which, if I do not misconceive the matter, it was at the moment presenting itself to you, — viz. that of an argument, operating in proof or support of the notion, that "the evil" in question, viz. the evil consisting in the extent occupied by that part of the rule of action which is in the state of common law "cannot be more than partially cured," — here of necessity comes my dissent.

"*Resort*" to them — these volumes? Oh yes: and make the most of them: this is what I myself have at all times done, and, for the particular purpose in question, should of myself be as diligent to do as you could wish to see me. But, on the part of the supposed draughtsman, the necessity of a resort to them once for all, for the purpose of his draught, is *one* thing: the necessity of preserving them for ever in their present state, as part and parcel of the rule of action, viz. in their present totality, with the continually supervening additions which on the same principle would be necessary, is *another*. Of the matter of "definition and explanation" to which you thus allude, taken in the aggregate, the mass will be found either *adequate* to the purpose, or *inadequate:* in neither case do I see how any bar is opposed by it to the complete cure of the evil in question: to a result so desirable as that of the conversion of that portion of the rule of action which is in the state of common law, into the state of written law.

First suppose it *adequate*. In that case, — from the volumes in question,—leaving where it stands the immense mass of argumentation, —pick out every particle of this precious matter, — bestow upon it the touch of the legislative sceptre, forbidding all future reference to any one of the volumes from whence it was extracted — this done, — the conversion is effected.

Now, suppose it *inadequate*. In this inadequacy, on the part of that portion of the rule of action which is in the state of common law, — what is there that should prevent, or so much as obstruct, the supplying of the deficiency by written law? By that same instrument, the affording supplies to all such deficiencies, or supposed deficiencies, as present themselves in the rule of action, — in the rule of action, in which soever of the two states it is found, viz. that of written law or that of common law, — is it not what in your several United States, as in every other government, with more or less success, you are doing every day?

While the paragraphs in question were penning, it was not in the nature of the case, that you should have been bestowing upon the subject any such closeness and continuity of attention, as that which I have been under the necessity of bestowing upon it. At the moment, if I do not misconceive you, the mass of the matter of "definition and explanation,"— afforded by the common law, as exhibited in the volumes in question, — presented itself to your mind, as being actually adequate to the purpose in question: viz. that of affording to the minds in question a *clear*, *correct*, and *complete* conception of the rule of action, meaning of such part of it as corresponded to the "*extent*" occupied by this same common law: and, not only adequate, but so exclusively adequate, that nothing, that in the shape of written law was likely to be substituted, seemed to afford any sufficient promise of coming up to it in this respect.

But if, for the moment, such, Sir, was really your conception of the matter, I cannot but flatter myself, that, before this my letter has been read through by you, if such be the honour destined for it, — at any rate, if, for a supplement to it, you can prevail upon yourself to read the accompanying letters, which are addressed to the citizens at large of your United States, — that conception will have undergone a change.

The positions which, in this view, I have to submit to you, Sir, are these, viz. —

1. That,—if, taken in themselves, the words of the matters in question were, so far as they went, adequate to the purpose in question,— yet, being as yet but words of *common law*,

they would, by that very circumstance, be effectually prevented from being adequate to the desirable purpose above specified.

2. That, on that same supposition, by the single circumstance of being adopted and employed by the legislature, and by that means converted into *written*, i. e. *statute law*, they would be rendered adequate to that same purpose.

3. But that, in truth, — even with reference to that portion of extent, which, in the field of law, the several masses of them respectively occupy, — so it is, that in most, not to say in all instances, they would be found to fail of being thus adequate.

4. That, taking the aggregate of them in its whole extent, and adding to it that portion of the matter of law which is in the state of statute law, the mass, thus composed, would be found to fail altogether of being thus adequate.

5. That, in the nature of the deficiency in question, there is nothing to prevent its receiving such supply as shall be adequate.

6. That, — with the exception of such imperfections as cannot but be the result of human infirmity in general, and of my own infirmities in particular,—I cannot but regard even myself as competent to the affording of such supply: and *that* in such sort as not to leave any very extensive or urgent demand for amendment.

As to the two first of these six positions, — for the proof of them, I must beg leave to refer you to what may be found under the head of *completeness*, or *all-comprehensiveness*, in the fourth of my eight accompanying letters above mentioned.

As to the four remaining positions, — in the instance of none of them does the nature of the case, on any such occasion as the present, —within the limits necessary to be prescribed to the present address, — admit of any such complete demonstration, as I cannot but flatter myself with the thoughts of having given in the instance of the two first. Speaking in general, and taking the whole together, — no better proof, I must confess, can I find than this, viz. that, of a survey of more than fifty years continuance, a persuasion of my own to this effect has been the result.

Fortunately for me, — to every practical purpose, if I do not much misconceive the matter, nothing more is necessary than the absence of all demonstration to the contrary. As to the matters in question, viz. the several masses of the matter of definition and explanation, there they are. Such fresh ones as I shall have to present — let them come in competition with the old ones, it will rest with the legislature in question to take its choice: from the possession of this choice there will be something to gain, there cannot be anything to suffer or to lose.

But, though in regard to these same four last positions, the nature of the case, as above, admits not of anything like a complete proof of them, — yet a few observations there are of detail, which, by the direction they may serve to give to a reader's attention, may at any rate be conducive to that purpose.

Among the subjects presenting a demand for definition and explanation, take for example these six: viz. *offences, complex punishments, species of private property, offices, efficient causes of title to property, do. of do. to office:* — subjects, in respect of extent, every one of them widely comprehensive; — all of them taken together, not very widely short of being all-comprehensive. For the advantage of employing the current name of a class of objects continually under view, add *contracts: contract* being one of the most extensively exemplified of the *efficient causes of title* that bear reference to that *species of property*, which consists in the right to certain determinate *services*, at the hand of human agents: say — *in the right to the corresponding services.*

Clearness, correctness, and *completeness* — not to mention the subordinate and subservient qualities of *conciseness* and *compactness* — in the above-mentioned three articles may be seen, if I mistake not, the *properties* which, to answer its purpose, a "*definition*" or "*explanation*" must be possessed of. These, in the case of any *one* such object taken by itself: to these, — in the case of the whole aggregate of the objects of this kind contained in a complete body of law, — add *consistency*, and again *completeness*, viz. with reference to that whole.

To render *clearness* itself the more clear, add for the explanation of it the indication of its two distinguishable modes, viz. exemption from *obscurity*, and exemption from *ambiguity*.

Now, as to the use derivable, with reference to the present purpose, from these same specifications. Taking for the subject of the inquiry the *definitions* and *explanations* actually afforded by this same *common law*, — are they, in a degree approaching to adequate, possessed of these same properties? An averment which I will venture, Sir, to make, and *that* without any apprehension of your finding much of error in it, is — that the more closely you were to look into the assemblage of them in this view, the further you would find them from being in any such desirable case.

Look at the state of things in which they were respectively penned, — the more closely you look into it, the more thoroughly you will, I think, be convinced—that the endowing them with these qualities, in a degree comparable to that with which they might at present be endowed with them — endowed with them by a single hand, having that object stea-

dily in view — was, at the several points of time at which they were respectively penned, morally impossible.

Let it even be supposed, that, on the part of the several authors, the desire of investing them with these several qualities was constantly present, — still, that any share of appropriate power adequate to the production of the effect was, generally speaking, in their hands, is a position, the contrary of which may without hesitation be asserted. No otherwise than in so far as the same qualities were to be found in the several individual decisions from which they were deduced, — or, to answer the professed purpose, must have been deduced,—could these same qualities be given to the definition and explanation in question: and, the more closely any eye will bring itself to look into those same decisions in this view, the further will it find them to be from being in possession of any one of those same indispensable properties.

From *Littleton*, down to *Hawkins* and *Comyns*, through *Coke* and *Lord Bacon*, — from the reign of Edward the Fourth to the reign of George the Second — to go no lower — will any one have to look for the various hands by which those same definitions and explanations were penned. In so many successive ages — all of them, in every branch of art and science bearing relation to the subject, so little advanced in comparison of the present, — in regard to those same three qualities, viz. *clearness*, *correctness*, and *completeness*, all in equal degree, on what reasonable ground can any hope of finding them, in the instance of each one of all those several writers, be entertained? or of finding in those same individuals, in any such degree, the qualities of *consistency* and *completeness*, with reference to the whole field of law, and the whole aggregate of the several definitions and explanations with which it requires to be covered? — of finding all this in all these several individuals, by no one of whom does so much as the idea of any such whole appear to have ever been entertained?

In every other branch of art and science, — on the part of the most advanced of those past ages, think, Sir, of the universally acknowledged inferiority in comparison of the present age. Think whether, to the general rule presented by that thought, — in the arts and sciences belonging to *legislation* and jurisprudence, there be any circumstance, by which an exception can be presented!

Still, with an eye to the main question, viz. that concerning the "practicability" of effecting, by means of a body of *written*, alias *statute law*, a more than "partial cure" of the evil inherent in *common*, alias *unwritten* law, — permit me once more to call to view the substance of that paragraph of yours by which the intimation given of the necessity of a resort to the "complex terms" in question "for definition and explanation" is immediately preceded. Of this "unwritten law," "the extent," say you, "has been not a little abridged in this country" (meaning that of the United States) by "successive events:" of which events, the examples which you thereupon give are — the "*emigration*" to America — the penning of the several *colonial statutes*" — and the "*revolution*" by which the "*colonies*" were converted into "*independent states*."

True all this: but, to the purpose to which it bears reference — viz. the position representing as matter of "*doubt*" the "*practicability*" of the operation in question, — meaning the proposed complete "conversion of the common into a written law," and thereby, the extirpation of unwritten law, — in what way does it add strength? One glance more, and if I do not deceive myself, the circumstance in question will be found by you to be productive of a contrary effect. Towards the ultimate end in question, such were the advances successively made by so many successive operations. Here, then, to the several amounts in question, has the effect in question been actually produced; the very effect, in relation to which, when taken in its totality, the doubt, as to its "practicability," had been entertained. Yet, on any one of those occasions, any such general design as that of the complete extirpation of unwritten law, was it ever in view? No, assuredly. But, when it is considered, that, without so much as taking it into contemplation, such advances were thus made towards the accomplishment of this general design, — in this state of things — in the advances thus made — can any ground be really to be found, for doubting of the probability of such accomplishment, only because this same design is actually taken into contemplation, and the whole force of a long-exercised mind applied to it?

All this while, one thing there is, which I am perfectly ready to admit: and that is, that, — merely by continuing to operate without any deviation in that precise course, by operating in which those same advances were made, — true it is, that the complete accomplishment of the desired object would not be practicable. I mean, by continuing to enact statute after statute in the customary form: — in the form customary with us, and thence with you: in the form of a naked *ordinance*, unaccompanied by any portion of matter in the form of *definition* and *explanation*. At no point of time, in any quantity worth regarding, has any such matter been in use to be inserted in any article of written law: such is the fact. As to the reason — if reason be here worth thinking about — at no *antecedent* point of time had any such matter been in

use to be inserted. This in general is *man's reason*, in the sense in which *reason* is put for *efficient* or *final cause:* this more particularly is *lawyer's* reason. At the very outset, when *law* was in her cradle, what in this same sense was the *reason?* Even this, —that, in every instance, in those days, (not to speak of the present,) laws were the result of narrow and partial views — rude produce, huddled together upon the spur of the occasion. No superintending mind, either actually all-comprehensive — or so much as endeavouring, or even pretending, to be all-comprehensive, — employed upon the work.

But, by this circumstance, viz. that in the form of *statute law* no such matter of definition and explanation hath as yet been in use to be given, is the demand for it rendered the less real, or the less urgent? Not it indeed. Assuredly, Sir, it will not be so in *your* estimation, if in this respect the view you take of it on the occasion of this *my second* letter, continues the same as that which you were taking of it while writing *your first:* in relation to " the complex technical terms to be employed in the text," your observation is — that these will " be necessarily requiring a resort for definition and explanation." At this point, for the present purpose, I take the liberty of stopping.—Why? Because, in this observation is of course included the acknowledgment of the existence of a demand — a real, an indispensable demand — for " *definition and explanation*," — whatsoever be the source, or the receptacle, looked to, or to be looked to, for the supply.

In conclusion, as to this same point, on which I am happy enough to find my own conception confirmed by yours — viz. that in every body of law there is a class of terms that will be found " necessarily requiring a resort for definition and explanation somewhere," I will beg leave for the last time to beg your attention to the distinction which it involves.

Of the whole of the intended matter of your laws, suppose the form to be that in which it exists at present, viz. that of a set of *ordinances* — *naked ordinances* as above explained — unaccompanied with any number of definitions or explanations. For conception sake, suppose the whole of it actually penned: this whole matter will be composed of a determined assemblage of words. Of these same words, for one cause or another, some — for so we are agreed — will be found to stand in need of definition or explanation; others not. Now then, — due notice taken of the distinction, — on the occasion of it, I will venture to propose a practical rule. Among these same words, be they respectively in other respects what they may — to those which present themselves as standing in need of *definition* or *explanation* — for a sort of clothing or appendage to them, give, in each instance, in the *very body* of your laws, the requisite lot of definition or explanation accordingly: those which present no such need — leave them, as you found them, undefined and unexplained.

To the list of *explanation-needing* terms, belong unquestionably those which you have mentioned: viz. " the complex technical ones." But these will not be the only ones: and by real and distinctly ascertained exigency, not by custom alone, would the supply which I should afford be regulated. For examples of this supply, permit me to refer you to that one of those works of mine, to which, in the French dress for which it is indebted to the skill of Mr. Dumont, the honour of your notice has not been altogether wanting; and which, as to this point, has already received adoption at Geneva, as mentioned in the postscript to my above-mentioned letters to your fellow-citizens.

In the meantime, — for examples of the demand *without* the supply, permit me to refer you back to that page of this letter, (page 511,) in which, in the express character of " *subjects presenting a demand for definition and explanation*," half a dozen subjects have been specified. And note, that of these several subjects, the names are names of whole *classes:* and that, under each of these classes, *genera*, in a number more or less considerable, would be found comprehended.

As to words *not* needing definition or explanation, viz. in a book of law, — they will be found to be in general those of which the body of the language is composed: those of which, even for the purpose of legal operation, the precise import is supposed to be sufficiently made known, by the use made of them in ordinary converse. Such, for example, are those, of which the present page, with some of the preceding ones, is composed. Not that between the one class and the other, the nature of the case admits of any permanent line of distinction. Be the word or phrase what it may, — should any serious apprehension present itself, that, while by one person it is understood in the sense intended, by another person it may be understood in a sense *not* intended, and that in any such sense, any such effect as that of *sufferance* or *loss* in any shape, may probably be the result of misconception, — here, in the eyes of a humane and attentive legislator, will be a demand for definition or explanation, or both, as the case may be.

At this rate — I think I hear you saying — may not the demand be infinite? — No, Sir: the demand will not be infinite. Wheresoever, by ordinary good sense, unfurnished with any special and appropriate learning, the supply promises to be afforded — afforded by neighbour to neighbour, by friend to friend — afforded without need of resort to any as-

sembly of legislators, or to any individual man of law — there the supply may be left to be thus afforded: there, if to a book, the resort may be to an ordinary dictionary: and the book of the laws may thus be left unburthened by it.

Having thus applied my endeavours to the removal of those doubts, which my respect for the quarter from which I viewed them coming down upon me had rendered so alarming — applied these my humble endeavours — and now that they are closed, I cannot but flatter myself, not altogether without success — for any further particulars, if necessary, permit me, Sir, to refer you back to my first letter to yourself, and then onwards to those letters of mine on this same subject, which I have ventured to address to the whole body of my wished-for masters — the citizens of your United States. Believe me ever, with the truest respect and gratitude, Sir, your much obliged servant, JEREMY BENTHAM.

No. X.

Jeremy Bentham to the Emperor of all the Russias.

LETTER I.

Queen-Square Place, Westminster,
London, May 1814.

SIRE, — The object of this address is to submit to your Imperial Majesty an offer relative to the department of legislation.

My years are sixty-six. Without commission from any government, not much fewer than fifty of them have been occupied in that field. My ambition is to employ the remainder of them, as far as can be done in this country, in labouring towards the improvement of the state of that branch of government in your Majesty's vast empire.

In the year 1802, a work, extracted, as therein mentioned, from my papers, was by *Mr. Dumont of Geneva*, published at Paris, in three volumes, 8vo. under the title of *Traités de Legislation Civile et Penale, &c.*

In the year 1805, a translation of it into the Russian language was published at St. Petersburg, by order (if I am rightly informed) of your Majesty's government.

Since the publication of that work, Europe has seen *two* extensive bodies of law promulgated within its limits: one by the *French Emperor*, the other by *the King of Bavaria*. These two are the only bodies of law of any such considerable extent, that have made their appearance *within the last half century*. Of the one promulgated by the *French Emperor*, a complete *penal* code formed a part. In the preface to that authoritative work, my unauthoritative one is mentioned with honour: among the *dead*, *Montesquieu*, *Beccaria*, and *Blackstone;* among *living* names, (unless it be for some *matter of fact)* none but *mine.* In the Bavarian code drawn up by *Mr. Bexon*, much more *particular as well as copious mention* is made of that work of mine, much more *eulogy* bestowed upon it.

In *France*, under the immediate rod of Napoleon — in *Bavaria*, under the influence of Napoleon — the generosity displayed by the notice thus taken of the work of a living Englishman, could not but call forth my admiration.

Approbation is one thing; *adoption* is another. With mine before them, both these modern works took for their basis the jurisprudence of *ancient Rome*. Russia, at any rate, needs not any such incumbrance.

In the texture of the human frame some fibres there are which are the same in all *places*, and at all *times:* others, which vary with the *place*, and with the *time*. For these last it has been among my constant and pointedly manifested cares, to look out and provide. Of the particularities of Russia, I am not altogether without experience. Two of the most observant years of my life were passed within her limits.

Codes upon the *French* pattern are already in full view. Speak the word, Sire, *Russia* shall produce a pattern of her own; and then let Europe judge.

To Russia, it is true, I am a foreigner. Yet to *this* purpose scarcely more so than a *Courlander*, a *Livonian*, or a *Finlander*. In point of local knowledge, to place me on a level with a native of Russia — to *me* as to *them* — information in various shapes could not but be necessary. Any such assistance, no person could ever be more ready to supply, than I should be solicitous to receive and profit by it.

In my above-mentioned work, a sample of a *penal code* is exhibited. In the first place, what I should humbly propose, is — to do what remains to be done for the completion of it. For this purpose, not many months would, I hope, be necessary.

Sovereign and Father — in this double character it is on all occasions your Majesty's wish and delight to show yourself to your people. In this same character, even on the rough and thorny ground of penal law — in this same happily compounded character, addressing them through my pen, your Majesty would still show yourself. The Sovereign by his *commands*, the Father by his *instructions:* the Sovereign not more intent on establishing the necessary obligations, than the Father on rendering the necessity manifest; — manifest to all men; and, at every step he takes, thus justifying himself in their sight.

Reasons — yes, it is by *reasons* alone, that a task at once so salutary and so arduous can be accomplished: — reasons — connected, and that by an undiscontinued chain of references — on the one hand, with the *general principles* from which they have been deduced; on

the other hand, with the several *clauses* and *words* in the text of the law, for the *justification*, and, at the same time, for the *elucidation* of which, they have respectively been framed. An accompaniment of this kind would form one of the peculiarities of my *code:* a sample is given in my above-mentioned *treatises*.

This sample was a challenge to legislators: the well-intentioned but strictly-shackled Frenchmen shrunk from it. How acutely sensible they were of the usefulness of such an accompaniment — how they wished, and how they feared to expose their works to so searching a *test* — how they tasked themselves to produce a sort of *substitute* to it — (I mean a mass of vague generalities left floating in the air, and destitute of all application to particulars) — how sadly inadequate is that substitute — what excuse is given for the deficiency, and how lame is that excuse — all this may be seen in their respective works.

All-comprehensiveness, conciseness, uniformity, simplicity— qualities, the union of which is at once so desirable and so difficult — such, as far as concerns the choice of words, are the qualities for which the nature of the work seems to present a demand. To infuse them into it, each in the highest degree which the necessary regard to the rest admits of, would on this, as on all similar occasions it has been, be to my mind an object of unremitting solicitude. With what promise of success, let the above-mentioned sample speak. Whosoever sees that *one part*, sees, to all such purposes, *the whole*.

In the midst of war, and without interruption to the successes or to the toils of war, a line or two from your Majesty's hand would suffice to give commencement to the work: — to this, the greatest of all the works of peace.

As to *remuneration*, the honour of the proposed employ, joined to such satisfactions as would be inseparable from that honour, compose the only reward which my situation renders necessary, the only one which my way of thinking would allow me to accept.

With all the respect, of which the nature of this address conveys so much fuller an assurance than can be conveyed by any customary form of words, my endeavour would be to approve myself, Sire, your Imperial Majesty's ever faithful servant,

JEREMY BENTHAM.

No. XI.

Alexander I. Emperor of all the Russias, to Jeremy Bentham, London—written with his Imperial Majesty's own hand, in answer to the above, [No. X.]

FRENCH ORIGINAL.

MONSIEUR, — C'est avec un grand intérêt que j'ai lû la lettre que vous m'avez écrite, et les offres qu'elle contient d'aider de vos lumières les travaux législatifs qui auraient pour but de donner un nouveau code de loix à mes sujets. Cet objet me tient trop à cœur, et j'en connais trop la haute importance, pour ne pas désirer, pendant sa confection, de profiter de votre savoir et de votre expérience. Je prescrirai à la commission qui en est chargée d'avoir recours à vous et de vous adresser ses questions. Recevez en attendant mes remercimens sincères, et le souvenir ci-joint comme une marque de l'éstime particulière que je vous porte ALEXANDRE.

Vienne, le 10-22 Avril 1815.

ENGLISH TRANSLATION.

SIR, — It is with great interest that I have read the letter which you have written to me, and the offer it contains to give the aid of your enlightened mind to any such labours in the field of legislation, as may have for their object the giving to my subjects a new body of laws. This object I have too much at heart, and I am too well apprised of its high importance, not to be desirous, while that business is in hand, of availing myself of your knowledge and experience. I shall direct the commission, which stands charged with it, to have recourse to you, and to address to you its questions. Receive in the meantime my sincere thanks, and the annexed keepsake* as a token of the particular esteem in which I hold you. ALEXANDER.

Vienna, 10-22 April 1815.

* This "*souvenir*" was contained in a small packet, closed by the imperial seal. In an accompanying letter from a minister in the suite of his Imperial Majesty to a Russian gentleman of distinction then in London, it was spoken of by the description of "*un bague de prix*," a valuable ring. The packet was returned with the seal unbroken: the reason will be seen presently.

While the Emperor was still in London, Prince Adam Czartoriski, being apprised of the habitual state of seclusion to which my pursuits have condemned me, obtained, through the intervention of a common friend, the assurance that the door of my hermitage should be open to him, for the purpose of a request he wished to make to me for my eventual assistance in relation to a code of laws, of the concession of which some expectation was at that time entertained. He came accordingly, and was received with the respect commanded by his well known character, and the cordiality produced by the remembrance of old acquaintance. Being at that time in a state of constant attendance on his Imperial Majesty, this Prince had already for some time been, and for a considerable time continued to be, universally regarded as the destined Viceroy of the then future kingdom. The intentions of his Imperial Majesty with relation to it were at that time either not yet formed, or not yet disclosed: but, if not the hopes, at any rate the wishes, of the Polish nation pointed to the comparatively at least, and in no inconsiderable degree even absolutely, excellent constitutional code, which

No. XII.

Jeremy Bentham to the Emperor of all the Russias.

LETTER II.

London, June 1815.

SIRE, — I open this moment the letter in your own hand, with which your Imperial Majesty has been pleased to honour me. — Through another channel, I receive, in the words *bague de prix*, the interpretation of the word *souvenir*. My endeavours to make myself understood on that subject, have, I fear, not been altogether successful. The same packet which conveys to your Majesty this expression of my gratitude, will bear witness for me, that in my eyes, — after the proof afforded me, as above, of the place which I am fortunate enough to possess in

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towards the reign of the amiable and unfortunate Stanislaus had been brought forward under his auspices.

The eventual assistance desired was no sooner asked than promised. But, every thing depending upon the perhaps unformed and at any rate unscrutable will of his Imperial Majesty, every thing that was said on that subject was, on the Prince's side naturally, and on my own carefully, confined to generals.

As to the Imperial letter,—having received it in June 1815, early in the next month I sent a reply of considerable length, sending at the same time a copy of it addressed to the Prince, whom I understood to be still in attendance on the Emperor.

On the subject of the *ring*,—observing that so distinguished an honour, as that of a letter under his Imperial Majesty's own hand, divested of their value all such ordinary favours as the packet was said to contain, I begged leave to refer his Majesty to the letter thus remunerated, for a proof of my inability to accept anything to which any pecuniary value could be attached.

In regard to the *commission* or *board* in question,—I took the liberty of saying, that I would hazard the prediction, that from that quarter no such, nor any other questions, would ever be addressed to me: that, as to the minister—in whose hands the management of the business was lodged,—partly from such of his productions as I had seen in print or manuscript, partly from the special and separate reports of divers well-informed persons, I was myself pretty well informed of the state of his qualifications for this most important of all functions: that I was but too fully persuaded of his incompetency for any higher task than that of collecting materials: that he was already much better acquainted with my works than it was agreeable to him to be: that his colour might, if his Majesty pleased to make the experiment, be seen to change at the bare mention of my name: that I was fully and particularly apprised of the money which in the shape of *salaries* had been employed in the *formation* of that department: that the managing head being thus incompetent, the result would be, —that, to any other purpose than that of collecting materials, the whole amount was expended in waste: that not to speak of other instances with which the public was but too well acquainted, the appointment made of such a person was of itself a proof but too conclusive, of the sad dearth there was in that vast empire, if not of persons actually possessed, of persons as yet known to be possessed, of the qualifications necessary for such a work: that if any such questions, as his Majesty could have had in view, were to be addressed to me, the only shape, in which I could give an answer capable of being of use, would be that of a complete Outline of a body of law, such as I had already offered to sketch out: that if his Majesty would be pleased to call for such a work at my hands, and at the same time invite all persons in general, and his own subjects of both nations in particular, to exhibit works in competition with mine,—he might thus not only bring under his eye the whole existing stock of appropriate talents, but give birth to an indefinite increase: and thus, at little or no expense, establish a *school of legislation*,—and thereby make the best provision possible for filling the situations belonging to the department in question, with persons of whose aptitude for the functions of it the most apposite and conclusive proofs had been afforded: that in the first instance the expedient might be tried in Russia, or in Poland, or in both countries at the same time: and that, as to my own part, in Poland in the hands of Prince Czartoriski, I should be sure of the absence of all such opposing tricks, as I should be sure of the presence of, in the other case.

After a letter to any such effect as the above, so far as concerned Russia, my expectations, it may be well imagined, could not be sanguine: but so far as concerned Poland,—on the supposition of Prince Czartoriski's being what he was at that time universally said to be about to be, such was the known benignity and indulgence of his Imperial Majesty's disposition, there might, it seemed to me, be still a chance. From the Prince at any rate, though scarcely from his Majesty, I was still in expectation of an answer, —when, on a sudden, — my situation being at that time at a distance from the centre of intelligence,—I learnt from the public prints, that the appointment of Viceroy, over the newly organized, or rather disorganized, remnant of the once republican kingdom, had been given to a name that I had never heard of.

After this, the treaties that were made public rendered it but too manifest, that, together with so many other looked-for constitutions, the constitution of *Poland* had taken its seat on the same cloud with *Utopia* and *Armata*: that what remained of that unhappy country under its own name, had been finally swallowed up in the gulf of Russian despotism: that, in a word, engagements are regarded as binding, by those alone who cannot violate them with impunity; and that of that modern *Holy League*, which in its spirit is so congenial to that of the original one, it is a fundamental principle,—that, in the hands of the *ruling* and *sub-ruling few*, the nearer the condition of the *subject-many* can be brought to the condition of the beasts of the field, the better it will be for the interests, eternal as well as temporal, of all parties. [*Note to 1st Edition*, in which the preceding correspondence was published in the body of the work, while that which immediately follows, appeared afterwards in the "Supplement." *Ed.*]

your Majesty's good opinion—money's worth, as well as money, is, in this case, without value. The imperial seal will be found unbroken.

Your Majesty's *wish* is—to turn my humble services, in some way or other, to account. In that view it is, that your Majesty has been pleased to point out a particular *course.* But so it happens, that if this and no other were the *course* pursued, it is not in the nature of the case, that that *wish* should in any degree take effect. The impossibility is the result of circumstances, which to your Majesty are not known, and which it is therefore necessary for me to bring to view: which done, I will take the liberty of submitting *two courses*, in either of which, the opinion your Imperial Majesty is pleased to entertain of me, might be productive of public benefit.

" Je prescrirai," says the letter — " Je prescrirai à la commission d'avoir recours à vous, et de vous adresser ses questions." — The course is a perfectly regular one, and nothing is more natural than that it should have been suggested, or even that it should have suggested itself, to your Majesty. Yet if this were all, your Majesty's intentions, it will be seen, would be altogether frustrated.

In my former letter, a proposal I took the liberty of submitting was, that I should receive your Majesty's orders, for the drawing up upon a plan of my own, and submitting to your Majesty, a *projêt de loi,* on the subject of some large portion of that *complete* body of law, which has so long been in contemplation: and in particular, of that which belongs to the *penal* branch: upon the closer view, which the present occasion has obliged me to take of the subject, the course which, as above, had at that time presented itself simply as an eligible one, now presents itself to me as the *only* eligible one.

The *penal* — I understood from good authority a little more than a twelvemonth ago — was the branch, on the subject of which, at that time, or a little before that time, the greatest advances had been made. From the commission alluded to, questions relative to this branch (suppose) are addressed to me. For giving answers to those questions, with any prospect of being of use, there is but one course which I could take; and this is — to draw up as above, the proposed *projet de loi*, and so transmit the *tout ensemble.* Yes, Sire: upon the *tout ensemble*, in a case like this, everything depends. The points to which the questions would point, would be such and such particular points. What, in such case, I should have to say in answer, I well know. —" It will not be possible for me (I should say) to determine within myself what is best to be done in relation to those points in particular, until it is understood by me what is proposed to be done in relation to such and such other points, with which those are necessarily connected. "

In an all-comprehensive body of law, such as that in question, each provision requires to be adjusted to, and for that purpose confronted with, every other. In no other way should I ever think — in no other way did I ever think, of drawing up the *projet* of a *code.* Thence it is that, if not in the first instance, at the long run, any papers sent by me in the shape of answers, would, if they amounted to anything, fall into that very shape in which I ventured to propose they should be presented in the first instance, and in which the course in question would not admit of their being presented, if at all, till at the end of an indefinitely greater length of time.

On a subject such as this, it is only in proportion as a man is himself master of it, that he is qualified for putting questions to others. On a subject such as this, in the situation occupied by the persons alluded to, if men are perfectly qualified for putting questions, they are pretty well qualified for doing the business without putting questions: at any rate, if, in their own opinion, they are qualified for putting any such questions, in that same opinion they can scarcely fail of being qualified for doing the business without putting any such questions.

But, the better *qualified* they are in their own opinion for doing the business, and thence for putting questions in relation to it, the less will they feel *disposed:* and assuredly, so long as by any means it could be avoided, no such questions would ever be put.

Suppose them, however, put — put by the persons alluded to — the questions are still *their* questions. In relation to those questions, before they are sent, the determination will have been already taken: taken by the very persons by whom the questions will have been penned.

The transmission of the question will be matter of *form.* Supposing answers sent, the reception given to the answers will be matter of form. If the acknowledgment of their being received can be avoided, avoided it will be.

If it cannot be avoided, the matter of the answers divides itself into two parts. In this or that part, does it happen to be *conformable* to the predetermination, taken as above? In that part it is of course *needless:* useless, therefore, — in any other character than that of a testimony in favour of the wisdom by which the predetermination was made: — as to the *unconformable* remainder, coming, as it does, from a foreigner, who, if he has some notion of the business taken in general, at any rate does not understand the state of the particular country in question, it is of course *inapplicable.*

Sire, this is not surmise: it is certainty—certainty, derived from reiterated experience.

The business being, under your Majesty's government, as the like businesses are with us, in *form* put into the hands of a *commission*, or, as we say here, a *board*,—your Majesty's letter to me could not, with strict propriety, have spoken of it in any other terms. But, so far as concerns original penmanship, this same business (it is no secret) is,—as in the first instance every such business ought to be, or rather cannot but be,—in the hands of one, and but one, person. Now this one person is generally known: the others being *figurantes*, and, except to the readers of your Majesty's court calendar, not known. Of this one person, and no other, I must therefore speak, on pain of being unintelligible.

Of this person, though near two years in your Majesty's dominions (it was in the years 1786 and 1787,) not having visited either capital, I have not any personal knowledge. But of *his* writings *I* know a great deal more, and of *mine*, *he* knows a great deal more, than it is agreeable to *him* to think of. Ever since he began his career, he has beheld in my name an object of terror: an emotion which, at several distinct times, in the view of several different persons, has betrayed itself: betrayed itself by symptoms, such as would figure in a comedy. Your Majesty has no time for gossiping anecdotes, or I could furnish written proofs.

Sire, I shall as soon have answers to send to the Emperor of Morocco as to a commission so *headed*. But, if you have a mind for a laugh, tell him you have received papers from me, and that they are satisfactory. But salts and smelling-bottle should be at hand.

Sire, I should ill warrant the good opinion entertained of me, if I hesitated to pronounce him *radically* incapable; for, supposing this to be a truth, I am, perhaps, the only person, from whom, with any chance of good effect, your Majesty could receive it. The persons, by whom on such a subject, any judgment at all could be pronounced, are extremely few: of these few, probably not one, how intimate soever his persuasion were, could dare to avow it to your Majesty: unless, perhaps, it were some *rival*, whose suggestions would be liable to be referred altogether to the motive indicated by that name.

Meantime, from the person in question, with his colleagues and supporters, your Imperial Majesty will have received the assurance, that no such assistance, either from myself or from any other foreigner, is necessary: and that not being necessary, it would be but an incumbrance: for that no foreigner has or can have any tolerable acquaintance with the business: while *they* are become complete masters of it. In relation to this matter, I will venture to submit to your Imperial Majesty the following observations:—

When, from any country, a complete body of law, such as appears to be proposed,—or any one of its largest divisions, such as a penal, a civil, or a constitutional code,—is in contemplation,—in respect of publicity, two modes of going about the business—the *close* and the *open* mode—require to be distinguished.

Carried on in the *close* mode, it is carried on as in ordinary cases, by a single person, or some small number of persons, appointed by the sovereign; and not made public at all, till it comes out *armed with the force of law*.

Carried on in the *open* mode, the work, antecedently to its coming out armed with the force of law, is made public, viz. in the way in which literary works in general are made public: and this, for the purpose—if not expressly declared, at least implied and generally understood—of its being taken for the subject of observations, such as any person (keeping his expressions of course within the bounds of respect and decency) may, in a manner alike public, feel disposed to communicate. The mode, which, in the present case, will, in course, be recommended by the commission, is the close mode. Why? Because in this mode, their inaptitude, be it ever so complete, will be screened: screened, till exposure comes too late for obviating and preventing mischief, with which it is pregnant: whereas, by the *open* mode, it would be brought to light in time.

In regard to the demand for previous publicity, altogether different is the present case from that of *ordinary* legislation; *i. e.* legislation taking for its subject matters of detail, as they happen to present themselves. In *that* case, the business is, of course, and must be carried, and cannot but be, carried on in the *close* mode. This closeness is what follows from the constitution of the government: as that does from the extensiveness of the territory, and the state of society among the great bulk of its inhabitants. By want of time, if by nothing else, previous publicity is in that case rendered generally impracticable. The demand for legislation being, in this case, the result of sudden exigency,—such exigency requires to be provided for as it occurs, and without loss of time.

Quite *different* in this respect—not to say opposite—is the present case: the case (it may be called) of *codification:* where, of the entire field of *law*—a field little less extensive than the whole field of human action—some very large portion (a third, a fourth, a fifth, or some such matter)—and which, in some way or other, is—and for ages has (in some shape or other, at successive times, though, hitherto, as to a large proportion of it, in a bad enough shape) lain covered with

law, — is to receive an entire new covering all at once. The field having already its old covering, hence comes the *facility* of waiting, and that without any more than the accustomed inconvenience, for whatsoever lights may be capable of being collected, for the elucidation of the ground: and thence, during whatsoever length of time may, for so important a purpose, be found necessary: *waiting*, viz. before final enactment; the formation of the new one, if as yet unformed, or the examination of it, if formed, being all the while going on. But, of this same new covering, whatsoever may be the sort of matter which it substitutes to the old, one sure effect will be (unless in so far as this or that particular exception comes to have been made and declared) to reduce the old matter, in its whole extent, to a non-entity. And, along with the *facility*, hence comes the *demand* for a delay — a precaution at once so necessary and so safe.

In a case like this, answers from me received or not received, when, by your Majesty's authority, the code as penned by the commission first comes out, will it come out already armed with the force of law? or only in the shape of a *projet de loi*, continued thereupon in that state, for a length of time more or less considerable, — to the intent that, by that means, the sense of the public at large, or of a determinate portion of the public, may in the mean time be, in some shape or other, taken upon it?

On the first of these plans, in case of an ill-penned code, the mischief would commence immediately, and without so much as the appearance of a chance of its being prevented.

In the other case, an appearance there will be, of a chance of prevention: but very little more than an appearance will there be. — From the calling into question, in any one particular, the more or less explicitly declared excellence of it, what inducement in any shape can any other person find? — what prospect of advantage, either to himself, or to your Majesty's service? At your Majesty's ear, stands the official adviser, — seen to have been in possession of it for these dozen years or some such matter, — by whom you will be assured, that the observations are nothing worth, and the author an impertinent, from whom no good service, in this or any other shape, is ever to be expected.

Such is the sort of retribution which every one would, and the only one which, in this *close* mode, any one could, entertain a reasonable *expectation* of receiving, — for any labour, which, on so important and vast a field, he might otherwise feel disposed to bestow.

Sire, the mischiefs which, — from so prodigiously extensive, and at the same time new, a body of law, drawn up by such hands, — the population of your Majesty's vast empire will stand exposed to, are such as I tremble but to think of.

In detail, a great deal of bad legislation, the work of a variety of hands, all of them very indifferently qualified, may be endured, and the mischief flowing from it may continue to flow without much notice. Why? Because, being composed of additions gradually made to an original stock under the influence of which everybody was born, — while, of the mischief which is the result of it, a part more or less considerable, in consequence of the observation taken of it, comes sooner or later to be put a stop to, — the rest is imputed to the imperfections inseparable from human nature.

But, of a body of new law, such as that proposed, the effect is, in some very large proportion, as above, to annihilate the whole body of that fabric upon which everything which is valuable or dear to man depends: and, when the gap thus made in the old matter comes to be filled up with the new, — then it is, that, of any one of the inadvertences, or ignorances, or wrong judgments, which in this *close* mode, may with so full an assurance be expected, — ruin, to thousands and tens of thousands, will be but the too probable consequence.

At the same time it will be known — for it is known already — that the labours of an Englishman — of an Englishman, whose labours in this line stand approved, not only by other governments, — by the Bavarian, — by the French, at several different periods — but by your Majesty's, — and even by your Majesty in person — that these labours have, to this very purpose, been for these dozen years at your Majesty's command: and, all that while, those who, on this part of the field, have been in possession of your Majesty's ear, have been successful in their endeavours to keep the fruit of those labours from making its appearance.

In the hands of several different persons, — all unconnected with each other — all occupying, at different times, in their respective departments, the highest posts in your Majesty's service, — I could give your Majesty reason to be assured that my being occupied in a task of this nature would be a result in no small degree advantageous to your Majesty's empire: in this or that instance, matter to this effect, addressed to myself: in other instances, to other people. If such had not been their real persuasion, what could have been their inducement for declaring as much, to or concerning an unconnected, and in most instances personally unknown, foreigner? Then why not say as much to your Majesty? Sire, they were no longer in office: or, if they were, it had not been, or was not at that time exactly within their

province; or if it was, confidence was, as the event proved, on the decline.

The disappointments which, in this same ground, your Majesty has already experienced, are no secret. Now by what cause is it that these disappointments have been produced? By this one circumstance; — by the adoption of the *close*, to the exclusion of the *open* mode: by the omitting to take the benefit of such lights, as the world at large might be capable of affording: by exclusive confidence, placed in a small number of persons, or rather in a single person, of whose aptitude for the task no proof has ever seen the face of day: a task in which the whole field of government is included, and for which the whole stock of genius, knowledge, and talent, which the civilized world affords, would not be too great.

Sir, there exists not, even in this country, that man, or that limited number of men, who, in the eyes of the public, or even in their own, would be competent to such a task, without receiving all such lights, as, after publication made for that declared purpose, the public in its utmost amplitude should be disposed to furnish. In the commission in question, is it possible your Majesty should continue to see any such matchless combination of genius, intelligence, and wisdom — to say nothing of probity — as should render superfluous in Russia, those precautions, which in England are so indispensable?

As to *competition*, — in the close mode, of course there could not be any such thing: — competition I mean as between two or more entire *draughts*, i. e. *proposed codes* — drawn by different hands: unless it were between member and member of that same *commission* or *board;* which, in the present instance, I take for granted, is not to be expected. By possibility, the *open* mode might be preserved, *without* admitting competition. In the state of a *projet*, antecedently to its being armed with the force of law, one work, and no more, being admitted, such one work might be made public, with liberty to persons at large, or to particular descriptions of persons, to make observations on it: — to point out any such imperfections of detail that might seem imputable to it, but not to propose another *projet*, in the whole or in part, in lieu of it: in a word, to point out here and there a symptom of weakness, but not to present anything like a general and radical remedy.

But, in this case, in so far as the mode of proceeding can with any propriety be said to be *open*, its *openness* will, comparatively speaking, be of little use. Let the badness of the only work exhibited be rendered ever so manifest, no better will be produced. Let the disease be shewn to be ever so desperate, no remedy will be at hand to be administered. The utmost good, which in this way can be done, will be — the putting an end to the design altogether, by showing the unfitness of the hands who have been employed in it. But, even out of this good — negative as it is, and no better — a great evil would be but too apt to arise. Instead of the incapacity of the workman, the cause of the bad performance may be looked for — and being willingly looked for, may be found — in the nature of the *sort* of work: in its supposed incapacity of being well performed: and, supposing the unfitness of the *individual* work sufficiently recognized, this of course is the hypothesis which, by the strongest ties of interest, the unskilful workman will stand engaged to advocate.

So much for the *close* mode. Now as to the *open* mode, competition as above, being supposed admitted. What are its advantages?

In the first place, all that incalculable mass of mischief just alluded to, is avoided.

In the next place, the greatest probability is obtained, of the best possible code: a probability, the greater the number of the competitors on the one hand, and of the critics, in the character of advocates and judges, on the other.

In the third place, the comfort and satisfaction, which so unequivocal a proof of the sincerest regard for their feelings, their wishes, their good opinion, their lasting welfare, could not fail to afford to the thinking part of the people. A more unequivocal one it surely is not in the power of a sovereign to give. *Without* this token, — the best possible code, suppose it even a perfect one, will want much of producing the good effect, which, by means of a work of that sort is capable of being produced: *with* so expressive a token, any inconvenience, of which the change may, in spite of every care, happen to be productive, will receive no slight compensation, as well as reduction, from the proof afforded of the goodness of the intention that gave birth to it.

In the last place comes, as the effect of all these several causes, the ease to your Imperial Majesty's conscience. Think, Sir, of the responsibility — the tremendous responsibility — which you would incur, by setting the destiny of forty millions of souls, to hang, as it were, by a thread, upon a work of such vast extent, drawn up — I cannot but repeat it — by such ill-qualified hands. Yes, Sir, this would be responsibility indeed. Pursue the *open* mode — receive — not from mine only, but from every other hand, that can find such an offering to make, whatsoever it shall have to give — plan for the whole, plan for this or that part — miscellaneous observations, — no such burden will, in that case, press upon your Imperial Majesty's conscience. The consciences, upon which whatever burthen there is will press, will be—in the first place, those of the volunteer workmen themselves;

in the next place, those of the *thinking*, though not *working*, part of the public, whose suffrages, by another application of the same all-preserving principle — the *principle of publicity*, it will have been your Majesty's endeavour to collect. At the door of this many-seated tribunal, should its judgments prove more or less erroneous, will all blame from the error lie. Your Imperial Majesty,— having towards the avoidance of error done all that it is in the power of man to do, — will stand clear from all self-reproach, as well as from all censure.

Your Imperial Majesty has seen, on the one hand, the *close* mode, with its mischiefs: on the other hand, the *open* mode, with its advantages. Let the course, which from the first I ventured to point out, be adopted, — your Imperial Majesty will see all those mischiefs avoided — all these beneficial results secured.

In my proposal, as above, — the *open* mode, with all the advantages naturally attached to it — the open mode, with the benefit of *competition* — was implicitly included.

My *projet*, I took for granted, would be presented to your Imperial Majesty ready printed. Produced thus to the world before it had ever met your Imperial Majesty's eye, — the work might be ever so inapplicable, or even absurd, your Imperial Majesty would not be subjected to any imputation on that score. The only source of responsibility would be the choice thus made of the person, to whom the encouragement would thus have been given: but, from all imputation of improvidence on that score, your Imperial Majesty stands, it is hoped, sufficiently exempted, by the testimonies which in my first letter were submitted to your Imperial Majesty's notice.

In this state, let me suppose it published (I mean my *projet*) at St. Petersburgh. Over and above any particular degree of aptitude which it may be found to possess, — the advantages which result from the circumstance of its coming from a foreign hand, will presently (I can not but flatter myself) appear manifest.

Of any such publicity given to the work, the object or end in view can be no other than the receiving, from the thinking part of the public, indication of any such imperfections, as it may be in the power of any person to point out in it, — with or without the indication of correspondent remedies, or supposed remedies: unless for a distinct object be to be taken the enabling and encouraging them, to give indications of the like nature, in relation to whatsoever body of law may have been the final result.

In this view, when the publication is announced, — *notice* given in some shape or other to the public at large, — notice, having for its object the obtaining, from all such as in their own conception are qualified to furnish it, communication of the sort just mentioned, — seems to follow as a matter of course.

Publication, it is true, might have place, without any such notice. Moreover, the notice being given, the purport of it might confine itself to simple permission; without any direct and positive invitation. But, without positive invitation, — very limited, and even precarious, would the effect of the notice be in the way of *encouragement*. So, on the other hand, the warmer the invitation, the stronger the encouragement: the stronger the encouragement, and therefore the greater the probability thus afforded, of the accomplishment of the object thus supposed to be in view.

In so far as, in any imperfection or supposed imperfection having place anywhere in the proposed body of law, it happens to any person to see a probable cause of mischief, to himself or any other person or persons, in whose welfare he feels an interest — in so far, to engage him to do what depends on him towards making known such mischief, to those in whose power it is, or to him seems to be, to afford relief, *motives* cannot be wanting: all that can be necessary is the removal of *restraints*. By the invitation above supposed, this necessary removal will, at least, be strongly promoted, if not universally accomplished: I say, *if not universally accomplished;* for, in so far as, in the event of his making any such communication, an individual, by whom it would otherwise have been made, sees reason for apprehending injury at the hands of any subordinates, — in so far the invitation, given by the sovereign, cannot but, in the instance of that individual, fail of such its intended purpose.

But *motives*, how adequate soever, suffice not without adequate *means:* and, for the purpose of giving publicity in this way to all such useful information as, if *means* were not wanting, might be afforded, — the stock of necessary means at the command of individuals, would, I cannot but apprehend, be very far from sufficient, unless *facilities* were for this purpose afforded by the hand of government.

By the following very simple arrangement, if I do not much deceive myself, not only may the facilities necessary to this purpose be afforded, — but, in the only way in which it can be either necessary or conducive to the service, *encouragement* may be afforded, and *that* without any unproductive or superfluous expense; and moreover — and still without any additional expense — a *school of legislation* formed, out of which, for filling offices belonging to this department, individuals may be chosen, distinguished by the most conclusive proofs of that aptitude, of the deficiency of which the recorded confessions lie before me: proofs, such as the nature of things will not suffer to be afforded by any other means.

In the whole or in part, let the author of every such communication be eased of the expense of *printing:* in the whole or in part, let him moreover be eased of the expense of *printing-paper:* viz. to the extent of a limited number of copies: but with permission to add, at his own expense, paper for as many additional copies as he thinks fit: and so in regard to *advertisements:* money, received on account of the sale, to be paid, either all of it to the author, or all of it to the treasury, or in this or that proportion divided between the individual and the treasury, according to circumstances.

But an essential precaution, without which, mischievous deception instead of useful information will be the result, is—that this facility be afforded indiscriminately to every one that offers. If, under the notice of a selection to be made of the most deserving, the choice be left to any one man or body of men, — the consequence will be — that, to such communications alone as suit the personal purposes of these judges, whoever they are, will the facility be afforded: in every instance, in which, either in the matter, or in the author, there is anything that does not suit these personal purposes,—suppression, not publication, whatsoever be the merit of the work, will be the almost sure result.

To whom, then, shall the facility be afforded? To every offerer, without distinction, so long as any press remains unoccupied: he who first offers being all along first served.

But suppose every press thus occupied, who is it that shall then determine? — I answer, *Fortune.* Fortune has no sinister interest: *men* will, in such a case, be almost sure to have such interest, and to be more or less swayed by it.

Deception — the result of partial information — will not be the only mischief: instead of *reward,* he by whom a communication — useful in itself, but to the judge or judges in question unacceptable — is tendered, will in return for it receive *punishment.* As long as he *can* be kept, he will be kept in a state of expectation and anxiety, dancing attendance, and wasting — perhaps his *money,* and certainly his *time:* when at last his patience is exhausted, then it is that he will discover, or not discover, that from the very first he had no chance.

Another result, altogether natural, is — that, by persons on whom the decision depends, — with or without other persons on whom, though erroneously, it will be supposed to depend, — *bribes* will in some shape or other be received: and the candidates from whom they are extracted will be — as well those to whom it was predetermined to deny the facility, as those to whom it was predetermined to afford it.

The expense of such a facility — even if granted to the utmost extent of the demand — will it be considerable enough to be felt as a burthen by your Majesty's treasury? Glorious indeed will be the burthen — auspicious the sign — in such a case.

Here then, Sir, is your *school of legislation:* and presently I shall have to show you, that, — among the scholars, thus performing their exercises in this school, — persons will be to be found, better qualified than any others could be for doing that for you, which, in my situation, the most consummate wisdom would not qualify a man for doing for you.

My proposed code will be but an *outline.* Why? Because, in my situation, the most consummate ability could not furnish — moderate wisdom would not suffer a man to profess to furnish — anything more.

Among the circumstances by which a demand for legislation is produced, some are of *universal* growth, others only of *local* growth: to such only as are of universal growth, could a foreign hand undertake to afford *in terminis* an adequate supply of legislative provision, with any sufficient ground for confidence. In this outline will accordingly be contained so much of the proposed code as can be proposed to stand *in terminis.* For the filling up of this outline, notwithstanding the utmost degree of ability with which it can possibly be penned, whatsoever matter of detail, adapted to circumstances of *local* growth, may be necessary, must be prepared by some *native* hand: at any rate by some person, to whom those circumstances have been made sufficiently known by *residence.*

For this matter of detail, the demand will be produced — in the first place, by the widely different condition of different provinces; in the next place, by the different condition of different classes of persons in the same province.

Meantime, even in regard to these details, what I could do, what I am accustomed to do, and what in my proposed code I should make a point of doing, is — to furnish suggestions, having for their object the affording *guidance* and *assistance* to the local penman, in the adjustment of the details: in such sort, that the general principles exhibited and pursued in the *outline* — the principles adapted to such circumstances as are of universal growth, and such circumstances of local growth as are generally notorious — may likewise in the *filling up* be pursued. Accordingly, in this way likewise,—the microscope being, in this field, not less familiar to me than the telescope, — I should hope to be of use.

For shortness, I have said *filling up;* aware at the same time, that, to put the work in a state fit for use, not only *addition,* but *subtraction* and *substitution,* may occasionally be necessary.

Now then, Sir, comes the grand use — the immediate practical use — of your Majesty's *legislative school*, formed as above. For the filling up of the *outline* thus drawn, whether by my own or any other *foreign hand*, — matter of detail, as above, will be necessary. I might add, perhaps, even *native hand:* for, in your Majesty's vast empire, such, in many instances, are the differences between province and province, that the native of one will be little other than a foreigner to another. By whom, then, shall this business be performed? I answer — by some scholar or scholars, by whom proof of qualification for the function has been exhibited, — exhibited by exercises, performed as above, in that school: by him or them, in preference, by whom, — according to the best-grounded judgment that can be formed, — the proofs of greatest aptitude have thus been furnished. Among them all has no one been found, by whose works proof sufficient of this species of aptitude has, in a sufficient degree, been thus furnished? If so, I am truly sorry for it: for, this being the case, then not in the whole of your Majesty's vast empire, does there exist any person sufficiently qualified for the business. In the scale of aptitude, — that person, by whom proof of any degree of aptitude, how low soever, has been furnished, stands, at any rate, above all those by whom no such proof has been furnished.

Will it be said, by way of objection, that the same difficulties, as those just represented as attaching upon the choice of works for publication, will attach upon every choice to be made, among the authors for the filling of situations such as those in question, *after* the works are published? Not, surely, on any sufficient ground. For, of a selection made for publication, the consequence is — that, by every work not selected (except in the instances in which the author may have the resolution to publish at his own expense — instances which, under such discouragement, do not promise to be very numerous) the public sustains a loss: and, on that plan, among those who upon the open plan would have produced and given in their works, some there may be who, by despair of acceptance, may be deterred from applying their thoughts to the subject. A work thus stifled or nipt in embryo, is dead to every purpose: whereas a work, which, through the medium of the press, has once been brought to light, remains upon the carpet, capable at all times of being taken for the subject of an *appeal* by which every injustice, done to it in the first instance, may be repaired.

In this way, how unfortunate soever the choices made should eventually prove, still what will at the same be seen — seen by all eyes — by your Majesty — by your Majesty's subjects, — by foreign sovereigns — by foreign subjects — is — that those choices have not been altogether groundless: on the contrary, that, for the securing the best choices possible, the best adapted and most promising means have been employed.

By every such contributor — the authenticity of the production being supposed to be out of doubt — I mean the fact of its having been composed by him whose name it bears — (for this is a point that must not be overlooked) proofs of *attention*, bestowed upon the subject, will at any rate have been furnished: and this is more than will have been furnished by any one else.

Behold now the advantages, from the circumstance that the hand, by which the outline has been drawn, is a *foreign* one: —

1. No restraint whatsoever on the liberty of criticism. The hand, by which the work is presented, is one from which no man has anything to fear, any more than to hope. From such a hand, whatever comes is, as the sportsmen say, *fair game*. Not disfavour, but favour rather, will be looked for from the hunting it. Imperfections, and not merits, will be the objects looked out for with most alacrity by every native eye.

2. Suppose it put to use: — in the ultimately sanctioned code, suppose as considerable a portion of this outline employed, as the nature of the case will suffer to be employed. How pure will in such case be the satisfaction of the people! Here cannot have been any undue partiality — anything like *favouritism*. The author all the while at a distance, without connexion, and, — with the exception of that mutually honourable influence which is exercised by understanding on understanding, — altogether without *influence:* to the sovereign, not so much as his person known: and all this, matter of universal notoriety. Under such circumstances, by what imaginable cause can any preference that has been given to the work have been produced, but the *opinion* at least — the unbiassed opinion — of its suitableness to the purpose?

3. In this case, too, — howsoever it may be in *other* countries foreign to Russia, — an Englishman being the workman, critics can never be altogether wanting in England. From your Majesty a simple invitation would, I make little doubt, suffice to produce works undertaken expressly for this purpose. But, at any rate, *reviews* exist, by none of which, consistently with their interests, could a work, executed under these circumstances, be passed by unexamined. And well may your Majesty be assured, that for discovering in it imperfection in every shape, imagined as well as real, adequate motives cannot be wanting here.

Compare, Sir, with the legislation or codification school thus sketched out, the unschooled codification - establishment, at present or lately in existence.

The report made to your Majesty of the 28th February 1804, lies before me. Whatsoever may be its character in any other point of view,—in an *historical* point of view, it is of no small value. From 1700 to 1804—a space of 104 years,—commission after commission—office upon office—salary upon salary—and still nothing done. Thereupon, in 1804, a commission in a new form:—eleven years more, and still nothing done. Why? Because the only sort of means, by which, in the nature of the case, anything could be done—or at least tolerably well done—(I mean those above submitted) have never yet been taken. *So that money is but spent, no matter how it is applied.* So far as concerns salaries, in Russia (I cannot but suspect)—in England (I cannot but see)—such has all along been the principle acted upon: the consequences have been—those which, by the nature of things, are attached to such principles.

According to this report, in the time of Catherine II. the whole field of legislation was divided amongst fifteen *commissions*, composed all together of no fewer than 128 members. By each of these commissions, a mass of paper was covered with written characters: masses 15 (p. 12,) not one of them found fit to make its appearance. How should it have been? where should any of them have got their skill—these codificators? What motives, what means, had they for the acquiring of it? Seven years of hard labour, real or supposed, on the part of this set of commissioners (p. 12,) and then, if I understand the matter right, seven more years of the like labour on the part of another set—(p. 13,) and still nothing done. Publicity—the most unlimited publicity—the only possible means of doing anything,—and still nothing but the closest secresy put in practice!

Always the same failure—always from the same causes—and to the last the same hopeless course pursued. Ah, Sir, with what regret did I not see (it was in the report of 28th February 1804, p. 35) the long list of offices with pecuniary appointments, all of them to last—(for how in common compassion could it be otherwise?)—to last for the lives of the official persons. Official persons, 48: total of annual expense, roubles 100,000. But in these salaries were not included those of either of two personages,—each of them lending his name, neither of them anything else,—*High Excellencies*, the amount of whose appointments in that quality, shame, it should seem, kept out of the list.

By what portion of that multitude of salaried workmen has anything been done? and by such of them by whom anything has been done, in what quantity and to what value, has work been done?

Not but that, in the way of collecting *materials*, and putting them in order,—workmen, even in that multitude, may have been, and, for aught I can know to the contrary, have been, usefully employed: materials, consisting of dispositions of existing law, distributed under heads. Few perhaps are the occasions on which,—to the forming a sufficiently grounded judgment on the question, what, in relation to this or that head, *ought to be* law,—it is not necessary to know what actually *is* law. Statements, showing what *is* law, are therefore among the *materials*, which he to whom it belongs to say what *ought to be*, and thence what *shall be*, law, must have to work with. But, the workman by whom materials of this sort are collected and brought to the spot, is but the *hod-carrier*. And where are the *architects*, or so much as the *bricklayers?*

By any one of the *volunteer* workmen whom I have thus been labouring to introduce into your Majesty's service,—not a penny can be received, but for work, which, well or ill done, will, at any rate, have been done: no, nor in any other *proportion* than that of the quantity actually done: and, among those will be—not only bricklayers, but under-architects:—whichsoever function each man feels or fancies himself most fit for. *After trial*, if this or that man does not prove fit, so much the worse: but it is only *by* trial that he, or any one, can have had *much* chance of being *made* fit, or any chance at all of being *proved* to be fit.

Where, work or no work, salary is received, what you are well assured of is—a man's affection for the *salary*. Where, in the way here proposed, without salary, or pecuniary allowance in any other shape, work is done,—what you are pretty well assured of is—a man's affection for the *work*.

Affection, indeed, is not itself *aptitude:* but, in every case it is one cause of aptitude, and, in the present case in particular, there cannot be a more efficient, not to say a more indispensable one.

Meantime, if I have not been misinformed, one code at least—and *that* on the penal branch—if not already in print, is already in more or less forwardness, from the official hand. Now for a few suppositions:—1. It is out already;—2. It is not out yet, but comes out, before any *outline* from me is at St. Petersburgh;—3. It comes out, but not till after an outline from me has been for some time out at St. Petersburgh;—4. It never comes out at all. In these several cases, what may be the effect expected from my work?—from my work, including *school of legislation*, built on the *tribunal of free criticism*, which, as above, I consider as an *accompaniment* to it, or as one *fruit* of it.

Case 1. *It is out already.* But at any rate not with the force of law already given to it:

for, had this been the case, I should have heard of it. I should not expect to find that it is so, even in the *probationary* state. If it is,—then, before it receives the force of law, it will rest with your Majesty to determine, whether the *tribunal of free criticism*, above proposed for my own work, shall not take cognisance of it. But, in case of the affirmative, on which I cannot help reckoning—in that case, your Majesty's declaration on that head had need to be explicit—"*L'original est confirmé de la propre main de sa Majesté Impériale dans les termes suivans: ainsi soit fait.*" Thus in French. In English, *Woe to all gainsayers!* Such was the ægis, with which the authors of the report of 28th February 1804, thought it advisable to provide themselves. *Critics, be dumb! Woe be to all gainsayers!*

At any rate, if it be your Imperial Majesty's pleasure to cause a copy to be transmitted to me,—*observations* on it from me,—or, with your Imperial Majesty's permission (that my work may not be stopped,) from some friend of mine,—shall be submitted to your Majesty with all possible dispatch. It will then rest with your Majesty's pleasure, what delay, if any, to allow for the delivering in of my work, before the sanction of law is given to *that*, or any other.

Case 2. *It is not out yet, but comes out before any outline from me has reached St. Petersburgh.*—In the mean time, shall I have been useless? No, Sir—all this while, though I were all the time asleep, I shall have been rendering to your Majesty useful service. To the official hand, have been all the while applied the *spur* and the *rein*, formed by the idea of the *tribunal of free criticism*, which is waiting for that work: and, in conjunction with this idea, the idea of the rival work, from the hand, by the shadow which, at this distance, the official hand hath, as above, been so often made to tremble.

Case 3. *My Outline has reached St. Petersburgh, and from the official hand no Projet hath as yet been delivered in, but comes out afterwards.*—The official faculties will now have been put to their utmost stretch. The enemy—the foreign enemy—has been seen already on the field. For this his work, here will be at least one critic, by whom the virtual challenge can scarcely have been refused. Against the intruder's work, whatsoever can be said,—here at least is *one*,—and, at his back, others by dozens and by scores,—who, all of them, have had the strongest interest in saying it.

And now, the fresh subject being come in, the legislative school finds a fresh recruit of scholars:—scholars, as many as can descry for themselves any the least chance of advancement, from their exercises as performed in it.

Let me not here withhold the acknowledgment, which even already seems to be due. What from that hand I should expect to find, is—a work not unsusceptible of criticism,—of examination. In it I foresee a work, in which the forms of method will have been observed: in it will be found distinguishable parts. This I collect from what I see in the above *rapport*. A point (mathematicians tell us) has no parts: a *chaos*, how vast soever, has not any more. The fifteen masses of proposed legislative matter, spoken of in the *rapport*, had not, any one of them, any thing like method:—had not any *distinguishable parts:*—thus much I collect from the *rapport*. By this methodicalness, the sketch given in that same *rapport*,—and, I should suppose, whatsoever may have been shown to your Majesty since,—stands distinguished, I take for granted, *from*, or at least *above*, all that had gone before it. Here was one step, towards the one thing needful. This, I suppose, is that which gained for the author,—and, as far as it went, on grounds, the justice of which is above dispute,—your Majesty's favourable opinion and acceptance.

Altogether above dispute, are the importance of good arrangement to legislation, and the importance of a set of *synoptic tables*,—(*systême figuré* is the word used by the *French Encyclopedists*) to good arrangement: good arrangement and good tables are at once *effect* and *cause*. A man,—who, feeling the need of it, is able to frame an implement of this sort,—is beyond comparison better qualified for the main work, than one, who is either blind to the use of such a security for good arrangement, or unable to produce it.

This, then, is one step made towards the one thing needful: but it is not *itself* the one thing needful. Here are so many *drawers* or *boxes*. But the *contents?*—what will *they* be? Everything depends upon the contents: and, from nothing that I have ever seen or heard, can I entertain any favourable expectation, in regard to the contents, with which, if with anything, those same boxes are destined to be filled.

Your Majesty was well advised, in the acceptance given to those services. I see not well how they could have been refused. But the misfortune was—the yielding to that anxiety, which on the part of a person in that situation was at once so natural, and so pernicious:—the anxiety to preclude the sovereign, according to custom, from receiving, from any other quarter, services, of which the whole civilized world could not afford a supply too large.

Case 4. Lastly—suppose that *notwithstanding the spur so applied, as above, a reasonable time has elapsed, and still no work has appeared from the official hand.*—Inwardly felt conviction, of at least the comparative

goodness of the already published work, — self-conscious inability to produce a better, if any at all, — such, it will have become manifest, is the state of mind, which the silence has had for its cause. Meantime, here, — by the supposition — here, at any rate, is a something in hand: I mean my own work, whatever it may be found to be: — a something, which, but for this my humble proposal, would never have had existence.

To the number of commentators — under the assurance that, where the author is an unconnected foreigner, they will be critical ones, — and thence of self-appointed judges, under the assurance that they will not be favourably partial ones, — your Majesty sees plainly enough, that it is not without concern, that I should see any limits.

But, — in regard to the sort of a work itself, which is to be the subject of this criticism, — one *condition*, I must confess, I should not be sorry to see required, — whatsoever, in the way of *limitation*, might be the effect of it.

This is — that, to each considerable mass of matter, — nay even to each single word where the importance of it required as much, — considerations, destined to serve in the character of *reasons*, — stated, in proof of the propriety of whatever were so proposed to be established, — should all along be annexed.

This subject was touched upon in my former letter: — I cannot too earnestly solicit your Majesty's attention to it.

Sir, it is only by the *criterion* — it is only by the *test* — thus formed, — that talent can be distinguished from imbecility, appropriate science from ignorance, probity from improbity, philanthropy from despotism, sound sense from caprice, — aptitude, in a word, in every shape, from inaptitude.

Reasons, these alone are addresses from understanding to understanding. *Ordinances* without reasons, are but manifestations of will, — of the will of the mighty, exacting obedience from the helpless. Absolve him from this condition — rid him of this check, — not only the man, who presents a code to you for signature, — but the man who presents your shirt to you, — is competent to make laws. The man who *presents* the shirt? Yes, Sir, or the woman who *washes* it.

Give up this one condition, — Germany alone, on any one subject that you please, will furnish you with as many hundred codes as you please: — all of them faithfully copied from the chaos, which for a different part of the world was put together, some twelve or thirteen hundred years ago: — all of them composed upon the most economical principles: — all of them written at the rate of so many pages an hour: — all of them, without any expense of thought.

No reasons! No reasons to your laws! — cries Frederick the Great of Prussia, in a flimsy essay of his, written professedly on this very subject. Why no reasons? Because, (says he) if there be any such appendage to your law, — the first puzzle-cause of a lawyer, (le premier brouillon d'avocat) — that takes it in hand, will overturn it. Yes, sure enough: if so it be, that, — a text of law pointing one way, — a reason that stands next to it points another way, — that is, if either the law or the reason is to a certain degree ill constructed, — a mishap of this sort may have place. But, is this a good reason against *giving reasons?* No more than it would be against *making laws*. As well might it be said — *No direction posts!* Why? Because, if, coming to a direction post, a *mauvais plaisant* should take it into his head to give a twist to the index, making it point to the wrong road, — the traveller may thus be put out of his way.

Suppose now a code produced, as usual, without any such perpetual commentary of reasons: prefaced, for form sake, and to make a show of wisdom — prefaced, as hath so repeatedly been done, by a parcel of vague and unapplied, because inapplicable, generalities, under the name of *principles*. It may be approved, and praised, and trumpeted. But on what grounds? If, in regard to this or that particular provision or disposition of law, any distinct and intelligible *grounds* for the approbation are produced, — they will be so many *reasons*. Why, then (may it be said to the draughtsman) — why, if you yourself know what they are, — why, unless you are ashamed of them — why not come out with them in the first instance? — why not spread them out, at one view, before the public at large, — instead of whispering them, one at one time, another at another, in the ear of this or that individual, pre-engaged by interest or prepossession, in quality of trumpeter? — But if no *such* grounds — that is, if no grounds at all — can be produced, where is the truth or value of any such praise?

On the other hand, — suppose a body of law produced, supported, and elucidated, from beginning to end, by a perpetual commentary of reasons: all deduced from the one true and only defensible principle — the *principle of general utility* — under which they will, all of them, be shown to be included.—Here, Sir, will *indeed* be *a new æra:* — the æra of *rational legislation:* an example set to all nations: — a new institution: — and your Majesty the founder of it.

The *penal* is the branch of law, with which, in contradistinction to the *civil*, I in a manner took for granted that it would be deemed most proper to commence. Reasons are obvious, and seem conclusive. In the penal branch for instance, circumstances of universal growth have place in a larger proportion than in that other. On that account it lies, in a more extensive degree, within the compe-

tence of a foreign hand. In the penal branch, too, changes to any extent may be made, and — so they be but for the better in other respects, — neither danger nor alarm be produced by the change.

Not so in the case of the *civil* branch. Of *that* branch, the grand and all-pervading object is — *to keep out change*: — to prevent as much as possible, those *disappointments*, which are the result of *actual* and *unexpected* change, and those *alarms*, which are produced by the tremulous *expectation* of change. In this case, general uncertainty in the state of the law — that perpetual source of unexpected changes, in individual instances, to an unfathomable extent — is the grand source of evil: and uncertainty is the inherent disease of that wretched substitute to law, which is called *unwritten* law, and which, in plain truth, is no law at all. For this disease, *written* law — the only sort of law which has any other than a metaphorical existence, — is the only remedy. A remedy of this sort, Napoleon had the merit of giving to France. With what degree of skill it is made up, I have never yet seen any use in the inquiring. But, wretchedly bad indeed must this remedy have been, if it has not been in a signal degree better than none. Happy had it been for mankind, — if, in this way alone, he had set an example to its rulers.

It remains for me to speak of the way alluded to at the outset, as the *other* way, in which, with your Imperial Majesty's approbation, such services as it may be in my power to render, may, in some sort, be put to use; and in some degree, though not an equal degree, the objects, above spoken of, attained.

By the same conveyance with the letter from your Majesty, came one from Prince Adam Czartoriski. It is to remind me of an eventual promise I had made to him, and to call upon me for the eventual performance. *Poland* was, of course, the subject of this promise. What gave occasion to it, your Majesty may, perhaps, have heard already from that Prince. All that passed between us on either side was in generals: things were not at that time ripe for entering upon particulars: your Majesty's intentions were not sufficiently known. But, from the nature of the case, an inference I was led to draw, was — that in relation to that country, the *constitutional*, — antecedently at least to every other, — was the branch, with relation to which, my services were in view. But, of all branches of law, — the constitutional is *that*, in relation to which, so far as concerns the drawing of a general *outline*, a foreign hand seems less competent than in relation to any other. Why? Because constitutional law depends throughout upon *localities*. Here, then, the plan of giving answers, as above, to incidental questions, is the only one that seems suited to the nature of the case.

Not that in this case, any more than in the other, there could be any use in sending answers, — any further than as, in the place to which they were sent, they found a disposition to put them to use. But if, in the present instance, there be any deficiency on that head, — the application, so obligingly reiterated to me by that prince, is an effect without a cause.

Meantime, if it were your Majesty's pleasure to give me orders for an outline of penal and civil law, commencing with the penal law, for Poland, — my labour, although the field of it were confined to Poland, would find motives altogether adequate to the production of it.

My purpose would thus be answered, but not that which I can not but hope to find your Majesty's. For Russia, — no competition, no tribunal of free criticism, no school of legislation, no nursery for functionaries, employed in the department of legislation: nothing but a faint telescopic view of those establishments, as existing in Poland. The destiny of Russia delivered over to a single hand, — such as everything I have either seen or heard, concurs in forcing me to regard as an insufficient one.

Your Majesty sees my importunity? Why should I be ashamed of it? It is not for money: it is not for power: it is not for dignity: it is not even for favour: — it is for a chance of being of use: — of use? — and *to whom* of use?

Not inconsiderable, — either in extent, or number, or importance, — are the subjects of consideration, which I have thus ventured to submit to your Majesty's decision. But, so far as regards anything to be done by me, few points there are of any importance, in which the decision can be — at once so simple, so easy, and so safe.

To set me at work, all that would be necessary would be — an intimation of your Majesty's pleasure to that effect. English must be the language in which I write. It is accordingly in that language, that, in the first instance, it must be printed. But sheet by sheet, as fast as it comes out in English, Mr. Dumont, serving upon the same terms that I do, would — I am as certain as if he were here, and told me so — be happy to render it into French: in which case, the French translation would be in print nearly as soon as the original. The expense of the work in English would be *my* concern: with regard to the French, it would be as your Majesty pleased. To Petersburgh, as many copies, — in English, in French, or in both, — as your Majesty pleased to order, should be transmitted. What should be done in relation to them when *there*, would of course depend altogether upon your

Majesty's pleasure. But, I hope your Majesty will have no objection to the giving me a promise, that when there, *they shall see the light.* The work will not be a libel: and, if disapproved, — and, with or without reason assigned, the disapprobation declared, — any such disapprobation will not, naturally speaking, experience much difficulty in making itself respected. I have the honour to be, Sir, your Imperial Majesty's ever faithful servant,

JEREMY BENTHAM.

No. XIII.

*Prince Adam Czartoriski, of Poland, to Jeremy Bentham, London.**

Vienne, le 25 Avril 1815.

MONSIEUR, — Les courses continuelles que sa Majesté l'Empereur a faites, après avoir quitté l'Angleterre, et les grands intérêts qui l'ont occupé depuis quelque tems, ne m'ont permis que dans ce moment de remettre à sa Majesté Impériale la lettre que vous lui avez addressée, monsieur. C'est avec un plaisir particulier que je m'empresse de vous transmettre, ci-joint, la réponse de sa Majesté Impériale.

Veuillez recevoir également de mon côté l'assurance de la haute estime que je ne cesserai de vous porter, et permettez moi d'avance de me flatter de l'espoir, que vous ne refuserez pas de nous éclairer aussi de vos lumières dans tout ce qui pourrait avoir rapport à la législation, que sa Majesté Impériale daignera accorder à la Pologne. Je ne manquerai pas, lorsqu'il en sera tems, de m'adresser à vous, monsieur, et de vous rappeller les promesses amicales que vour avez bien voulû me faire à ce sujet.

Je profite, en attendant, avec un grand empressement de cette occasion pour vous prier d'agréer l'assurance de mes sentimens, et de la considération la plus distinguée avec laquelle j'ai l'honneur d'être, Monsieur, votre très humble et trés obéissant serviteur,

A. CZARTORISKI.

TRANSLATION.

Vienna, 25th April 1815.

SIR, — The continual excursions, which his Majesty the Emperor has been making, since his departure from England, and the great interests with which he has for some time been occupied, allowed not, until this moment, of my remitting to his Imperial Majesty the letter you addressed to him. It is with particular pleasure, that I hasten to transmit to you herewith his Imperial Majesty's answer.

Be pleased to receive, at the same time, from myself the assurance of the high esteem in which I shall never cease to hold you, and permit me in advance to flatter myself with the hope that neither to us,† will the benefit of your assistance be refused, on the occasion of whatsoever boon, in the way of legislation, his Imperial Majesty may deign to grant to Poland. I shall not fail, when the time comes, to address myself, Sir, to you, and to recal to your recollection the friendly promises you had the goodness to make to me, in relation to that subject.

Meantime I embrace with pleasure this occasion of begging your acceptance of this declaration of my sentiments, and of that most distinguished consideration with which I have the honour to be, Sir, your most humble, and most obedient servant, A. CZARTORISKI.

* Transmitting, in official form, the Emperor Alexander's Letter, No. XI.

† Meaning, *as well as Russia*, to which country alone the letter in question had borne reference.

No. XIV.

Jeremy Bentham, London, to Prince Adam Czartoriski of Poland.

Queen-Square Place, Westminster, June 1815.

DEAR SIR, — For one thing, I must begin with casting myself upon the Emperor's forgiveness as well as yours: *that* is, the enormous length of time (upwards of a month) that has intervened, between my receiving of the two letters, and the dispatching of these my answers. Another thing, for which likewise I must beg your indulgence, is—the rough state in which I am reduced to send a copy, of mine to the Emperor, for your use.

Both trespasses have their source, in an engagement under which the letters found me: viz. that of drawing up for this country, for the use of a voluntary association, a plan of National Education, in relation to which I may perhaps take the liberty of troubling you with a few words, before the close of the present letter, or at any rate by the next messenger. As to your copy, — the whole business of the Education scheme was in danger of being put a stop to for an indefinite length of time, had I not devoted myself exclusively to it; as to your copy — I mean your copy of my letter to the Emperor — I hope you will find it legible; and, consistently with my engagements, time could not be found for the copying and revisal of another fair one.

As to the original, you, as well as he, will, I fear, be sadly annoyed by it, were it only for the length of it. It was, however, absolutely necessary I should speak out: and I saw no hope of being able so to do, to any purpose in any lesser compass. I hear it said everywhere — that he is a *good-natured man:* — by what you will find me saying to him, that quality will be put to the *test.* From

me, if he has patience enough, he may thus *read*, what from a man in any *other* situation, it is not in the nature of things that he should either *read* or *hear*.

A bandage on his eyes — leading-strings on his shoulders — on *this* part of the field of government, such has hitherto been his *costume*. My aim is to rid him of those appendages; — is it possible he should forgive me? Forgive me or not, that is not the point: that he should suffer himself to be rid of them, *that* is the one thing needful.

I hope this will not draw *you* into a scrape: a scrape on your part so perfectly undeserved: for, no such thing as *a tale out of school* have I ever had from *you*.

If, by anything I have said, an end should be put, not only to *that* correspondence, but to another, which is so truly flattering to me, — I shall be truly sorry. But it was necessary to run the risk: for I think you will agree with me, that, whether *with* it anything be done or no, *without* it nothing was at any rate to be done.

The letter addressed to his Majesty I put into a separate packet. I avoid purposely any such attempt as that of making it pass through your hands. In relation to an official person there so frequently alluded to, it was absolutely necessary I should speak without reserve: and there seemed neither necessity nor use for *your* being involved in any such business.

Even if it should be in the *constitutional* part of the field of law, that my labours, such as they are, should be desired by you — (though for reasons already given, *that* is the part, in relation to which my hopes of being of use are least sanguine) — I repeat my promise to put them under your command: 1. Because I do not absolutely despair of being able to do good, here a little and there a little — even in relation to *that* branch; 2. Because (as I say to the Emperor,) *that* is the branch, which, *I imagine, you* had more particularly in view. But, my expectations are much more *extensive*, as well as sanguine, in relation to the *penal* and the *civil* branches: including, in both cases, (though, so far as concerns the organization of the *judicial establishment*, it belongs to the *constitutional* branch,) the *system of procedure*. Why? Because, in the *civil* branch, there will be a good deal of matter, — and in the penal a good deal *more*, — applicable alike to the circumstances of *all countries;* and therein applicable, with little or no difference, under *any form of government*. So far, therefore, I could myself *propose* matter, with a tolerable expectation of its being received, and thence with a proportionable degree of facility and alacrity: whereas, in regard to *constitutional* law, in which is included the *form of government*, it would be folly for me to pretend to originate anything considerable. What is the monarch willing to *leave*, or to *concede*, to your nobles, and the great body of the people, taken together? What are the monarch and your nobles, taken together, willing to *leave*, or to *concede*, to the great body of the people? What are the people at present in a condition to *receive*, if the *powers* on which it depends were *willing* to *concede* it to them? What more, within a moderate space of time, may they be expected to come *of themselves* to be *in*, or to be capable of being put *into*, a condition to receive, — and by what means? — All this, if known to anybody, is known to you: not a particle of it to me.

When, near the close of the reign of poor King Stanislaus, a constitutional code for Poland was drawn up, *Bukati* (he I think it was that was then resident here) sent me a copy of it. What is become of it, I do not exactly know. But what I remember is — that people in general were here much pleased with it: myself among the rest, as far as I had looked at it, which was very slightly: for, being deeply embarked in other pursuits at the time, nothing called upon me to suspend them for any such purpose as the making a study of it.

On the present occasion — *that* paper, is it intended to form the *basis?* This is, I doubt, too much to hope. Though why should it be? *There* would be a field for experimenting in: and, to a monarch with the whole Russian empire under such entire command, what possible *danger* can there be from any such experiment? Under the Great Turk, was not *Ragusa* even a *republic?* In such a case, more *real efficiency* than what he would lose in the shape of *coercive power*, the autocrat of Russia would gain in the shape of *gentle influence:* loss, were there any, would be all of it to the successor, — who, not having been the author of the *boon*, would not be a sharer in the *gratitude*. But, even by *him* — he being used to the comparatively new state of things — the loss, if there were any, would not be felt.

It is now, I think, about forty years since I first began to lift up my prayers for Poland. The most intimate friend I had, was *John Lind*, — privy counsellor to the king, — and, under his Majesty, original institutor as well as director of a school for four hundred cadets at Warsaw (of which I know not the fate,) — and governor to Prince Stanislaus, nephew to the poor king, — whose business at our court he did for a number of years, writing a letter from London every other post-day, — Bukati being all the while the resident kept for show, because our king would not see in that character one of his own subjects. Lind's first appearance at Warsaw was in that of reader of English, — to your father, or your uncle, — I forget which it was. Oh, how we used to talk, and talk, of Poland! and how

we used to curse the Fredericks, *great* as they were, not to mention other persons.

Being of all countries and of no party, I have just sent off to Paris a large packet of printed copies, of a part of the Education scheme, to leading men there:—Bourbonites, Napoleonites, and Republicans promiscuously, — some of them old friends of mine.

If you follow the camp, perhaps you may make prize of them: — yet I should be sorry you should: were it only because while you are at *Paris*, you will not be at *Warsaw:* and, whether you are so or no, I am of the number — and that I believe not a small one — of those who are impatient for your being there.

Well — but about this *Education scheme:* were it only to account for the delay, a few words I find I must trouble you with about it: even here, an experiment of it is about to be made, in a part of that garden of mine which you saw. It has for its object — the applying to the higher branches of learning, — and the higher as well as middling ranks of the community, — that *new* system of instruction, of the success of which you cannot but be more or less apprized. *Brougham, Sir James Mackintosh,* — and, if I can persuade him to lend his *name,* — for this is all he can have *time* to lend — *Romilly,* will be at the head of it. For the *details* of the management, there will be some very efficient men, with whose names you can scarcely be acquainted. For reasons not worth troubling you with, — my fixed determination has been, from the very first, not to be of the number. In the *executive* department of it, I accordingly bear no part: but of the *legislative,* the *initiative* has fallen wholly to my share. My labours in that field had (I believe) already commenced, when I had the honour of receiving you: and, for want of their being completed, the business was at a stand; and, by a few days more of delay, the season might have been lost (I mean, the time when expected *contributors* are in town;) and the execution of the plan deferred for a whole twelvemonth: and thereby perhaps finally defeated.

It is now in such advance, that everything which it is necessary to publish in the first instance, is either already in print, or in the printer's hands. A copy or two will, I trust, be brought to you by the next messenger. On this field, at any rate, in doing what I have done, I consider myself as being at work, — not less for *Russia* and *Poland,* than for *London.* For the elementary branches, as taught upon the *Bell and Lancaster* system, *Paris* is already provided with a schoolmaster from hence. The son of a Protestant clergyman — *Martin,* I think, is his name — was, in Louis the Eighteenth's time, sent from the north of France to a Lancasterian school, for the express purpose of learning the method, — and is now at Paris; and (I understand) much caressed there. His business there is, to form instructors. The salary offered to him was £200: — for such a station, a very considerable salary at Paris. —" Sir," says he, " that will be too much. *Economy* — success or failure depends upon the degree of *economy.* Such a sum" (naming it) " is perhaps as much as you need give. By this, the price will be set to those who succeed me. If, in my instance, in consideration of my being the first institutor, you see any claim to extraordinary remuneration,—let *that* come by and by, when by experience you see what I have done."

Just the same thing might the Emperor do for Petersburgh and for Warsaw. The expense — I mean the necessary expense — would be next to nothing: and if *this* cannot succeed with you, I am at a loss to think what else can.

For this purpose, you will see how necessary it has been for me, to take a fresh peep into every nook and cranny of the whole field of art and science: my business having been, to apply the new method of instruction to every part of that field, that is deemed capable of receiving it. My endeavour has been, to reduce the whole sketch into as narrow a compass as possible: and, the narrower the compass, the greater the quantity of labour which it has cost me. Locke's Essay (so he tells us himself in his preface) is too long — Why? " Because," says he, " I had not time to make it shorter."

If upon the field of Codification it be in my power to throw any *light,* you see the terms upon which it is in the power of your Alexander to have it. Exactly those upon which God Almighty had *his:* a couple of words, the whole of the expense.

I hope the Emperor will not be angry with me for returning his ring: if it had been a *brass* or a *glass* one, I would have kept it. If he will send the value of it to my masters and employers, as above, for their *school,* I, as well as they, shall be all gratitude. But of this, in that ensuing letter, with which *this* threatens you. Believe me ever, with the truest respect, Dear Sir, your most obedient servant, JEREMY BENTHAM.

PART II.

PUBLIC INSTRUCTION.

No. I.

(CIRCULAR.)—*Letter from His Excellency Wilson Cary Nicholas, Governor of Virginia, on the subject of Public Instruction. —Addressed (the copy of which this is a transcript) to His Excellency John Quincy Adams, Minister Plenipotentiary from the United States, London—Received by him 17th September* 1816.

Richmond, May 30th, 1816.

SIR,—By a resolution of the General Assembly of Virginia, the president and directors of the Literary Fund are requested to digest and report a system of public education, calculated to give effect to the appropriations made to that object by the legislature, and to comprehend in such system the establishment of one university, and such additional colleges, academies, and schools, as shall *diffuse the benefits of education throughout the commonwealth*, and such rules for the government of such university, colleges, academies, and schools, as shall produce economy in the expenditures for the establishment and maintenance of good order and discipline in the management thereof. As President of the Board, *the duty devolves on me, to collect from every source the information necessary for this important object.*

The great cause of literature and science is not local in its nature, but is an object of interest to the whole human species. The commonwealth of letters embraces every region, however remote. It cannot fail to excite pleasing emotions in every enlightened American, to perceive that Virginia has taken this subject under its patronage, and devoted a fund to its accomplishment, which is annually increasing. To you, Sir, I think it proper to address myself, knowing your attachment to literature, and feeling great confidence, that you will not consider your valuable time misspent in communicating any ideas which may promote so useful an object.

I can assure you, they will be received with that high sense of obligation, which their importance must inspire. I have the honour to be, with great respect, Sir, your humble servant, WILSON CARY NICHOLAS.*

* Note well, in conjunction with the *end* proposed by this presiding citizen of this American State, the *means* employed by him for the accomplishment of it: *end in view*, maximizing the subserviency of the proposed institution, to the public objects to the furtherance of which it is directed; viz. maximization of the *quantity* and *value* of the body of intellectual endowment and active talent in the several shapes in question; in other words, maximization of the *extent*, as *measured* by the number of the individuals in question: of the *extent* to which, as well as of the degree of *promptitude* with which, communication of the several branches of instruction shall respectively be made: *means* employed for compassing the end — collecting from *all nations* the appropriate lights.

Compare, with the course taken by government in this Anglo-American nation, the course taken in relation to the same part of the field of thought and action, by the government of the English nation, from which it sprung. Under the dominion of sinister interest, and interest-begotten prejudice, — by government and by individuals, the benefit of the endowments employed as means of instruction confined—studiously and anxiously confined — to such individuals of the rising generation, whose parents will submit to fetter their minds, by confining them to prescribed forms of religious exercise, to which, on pain of exclusion from the proffered benefit, their assent is forced: assent, for the procurement of which, if it were not mendacious, the force thus employed would be useless.

On this, as on all other occasions, *end in view* of a representative democratic government, maximization of the benefit to the *universal interest:* — *end in view* of monarchical government, as determined by the very nature of the government, maximization of the benefit to the *separate* and *sinister interest* of the *ruling one*, and the *sub-ruling few:* —*means* employed, perpetual addition to the force and efficiency of a selfish tyranny: to the yoke of a self-blinded and abject servitude.

No. II.

(CIRCULAR.) — *To the Governor of the State of*

Queen-Square Place, Westminster
London, June 1817.

SIR, — This letter waits upon you, in company with one on the subject of Codification. By that letter, the offer is made of a work to be eventually undertaken in future: by the present one, your acceptance is requested for two works, both of them already executed. One of them is comprised in the compass of a single whole-sheet table: it consists of a summary view of the system or mode of in-

struction, termed sometimes *the new system of instruction*, sometimes, from the inventors, *the Bell and Lancaster system*, the utility of which has already, in so many other countries as well as in that which gave it birth, received such ample testimony from experience. In the sheet in question, there is very little that can be called mine, except the compression and arrangement which I have endeavoured to give to the matter of it. Of the opinion, which, by a judge of acknowledged and official competence, Comte Delasteyrie, has been formed of the sort and degree of service rendered by the execution of this minor and subordinate task, the expression may be seen in a letter from Paris, with which I was honoured by that gentleman, in consequence of a copy of this same table, which without any accompanying letter had been transmitted to him.

The other is a work altogether my own, intituled *Chrestomathia*, written for the purpose of extending, and applying to the ulterior and higher branches of learning, for the use of the higher and more opulent classes, the mode of instruction, already applied with such undisputed success, to the primordial and elementary branches, for the use of the least opulent, and most populous classes. The proposed institution having already, in a quantum nearly sufficient for its commencement, received the requisite pecuniary support from a number of distinguished characters, — a building, upon a new plan of architectural construction, styled the *Panopticon* plan, the idea of which first originated with my brother (my only and younger brother, Sir Samuel Bentham,) is on the point of being commenced, within view of St. James's Park, in a quarter of my garden which has been allotted to the purpose. As to the book intituled *Chrestomathia*, though it has not as yet quite reached the extent originally proposed to be given to it, it may, as to the main purposes of it, be considered as a work already executed. It has not yet been made public in this country in the way of sale, but is expected to be out in a few days. What there is of it at present consists of two parts. Of Part I., being all of it the printing of which had been completed, a copy, in compliance with the general invitation, given in a printed circular by the then Governor of Virginia, dated Richmond, May 30th, 1816, and received in London on the 17th September of that year, was soon after, by Mr. Adams, to whom, in his quality of minister plenipotentiary of the American United States, a copy of that circular had been addressed, received from me at his desire, and transmitted to the State from whence the invitation came. Of Part II., consisting of an essay of the logical kind, on the subject of Nomenclature and Classification, the need of which had been suggested by the general map of the field of learning, described by Lord Bacon, and executed by D'Alembert for the first French Encyclopædia, the publication had waited for some Tabular Sketches, the printing of which has just now been completed.

A circumstance, by reason of which this work on Nomenclature and Classification in general may, in addition to its more general and principal use, be considered as forming a not altogether unapt accompaniment to the offer made of the draught of an all-comprehensive Code of Law, is this: — viz. that in the aggregate of the logical conceptions to which expression is given in this part of *Chrestomathia*, a sort of *instrument* is supposed to have been constructed, by the help of which a new sort of security is supposed to be afforded, for the connected qualities of *clearness*, *correctness*, and *completeness:* qualities, upon the degree of which so essentially depend, whatsoever beneficial effects can be looked for from a discourse of any kind, and in particular from any discourse designed to produce the effect of *law*.

No. III.

Paris, ce 23 Aout, 1815.

Monsieur, — J'ai reçu votre 2d Table Chrestomathique sur le système de Lancaster. L'ordre systématique et précis, avec lequel vous tracez les avantages, l'importance, et les applications, que présente ce nouveau moyen d'instruction, apprendra à l'Europe à mieux connoître toute son importance, et vous contribuerez ainsi à lui donner un plus grand dévelopement.

Nous faisons des efforts pour parvenir au grand but que se proposent tous les philanthropes éclairés de l'Angleterre. Nous ne pouvons pas y parvenir avec la même rapidité, vû les circonstances désastreuses qui accablent la France, et le système de destruction et de ravage qui y règne. Mais les mauvaises choses n'ont qu'un temps, et espérons que celui des bonnes arrivera un jour.

Je suis bien flatté que cette circonstance me procure le plaisir de vous témoigner les sentimens d'estime et de vénération que m'ont procuré depuis long-temps vos travaux, si utiles à l'humanité.

C. P. Delasteyrie.

TRANSLATION.

Sir, — I have received your second Chrestomathic Table, relative to the system of Lancaster. The systematic and precise order, with which you trace the advantages, the importance, and the applications presented by this new instrument of instruction, will render Europe better acquainted with the whole compass of its importance, and you

will thus contribute greatly to the development of it.

Our exertions are directing themselves to the attainment of the great end, which the enlightened philanthropists of England propose to themselves. We cannot make our way towards it with the same rapidity, by reason of the disasters in which France is overwhelmed, and the system of destruction and ravage which has place there. But the bad things of this world have but their time, and one day, let us hope, the good ones will take their place.

It is a circumstance very flattering to me, that the occasion affords me the pleasure of testifying those sentiments of esteem and veneration, which in my mind have for this long time been among the fruits of those labours of yours, which have been so useful to mankind. C. P. DELASTEYRIE.

No. IV.

Notice concerning Chrestomathia, by the Paris Lancasterian Instruction Society.

REPORT OF THE BRITISH AND FOREIGN SCHOOL SOCIETY TO THE GENERAL MEETING, DEC. 12, 1816. — EXTRACT.

Appendix, p. 20.—A " GENERAL REPORT," made by the Parisian Society, " on the " situation of Schools established on the " principle of Mutual Instruction in the " Departments, the Capital, and its Vi- " cinity, followed by an Extract from " Foreign Correspondence: read by M. " JOMARD, one of the Secretaries of the " Society, at the General Meeting of the " 23d of August 1816."

Ibid. p. 28.—*England.*—We have received from England interesting accounts on the improvement of schools, particularly on the application of the system to the instruction of adults, which will be the object of a separate report.

The account of the establishment, projected in London by Mr. Bentham, to turn the new system to the profit of the middling class of society, and apply it to the tuition of languages, drawing, and sciences, is the most important information that the society have received from England, since the last general meeting. The method has just been introduced into the English School of Artillery, for the instruction of mathematics: and new Greek and Latin grammars have been compiled to serve for the study of those languages on the same principles.

[For some further notices, coming properly under the head of " Public Instruction," *vide supra*, Part I. p. 530.]

CODIFICATION PROPOSAL,

ADDRESSED

BY JEREMY BENTHAM

TO

ALL NATIONS PROFESSING LIBERAL OPINIONS;

OR

IDEA OF A PROPOSED ALL-COMPREHENSIVE BODY OF LAW,

WITH

AN ACCOMPANIMENT OF REASONS, APPLYING ALL ALONG TO THE SEVERAL PROPOSED ARRANGEMENTS:

THESE REASONS BEING EXPRESSIVE OF THE CONSIDERATIONS, BY WHICH THE SEVERAL ARRANGEMENTS HAVE BEEN PRESENTED, AS BEING, IN A HIGHER DEGREE THAN ANY OTHER, CONDUCIVE TO *the greatest happiness of the greatest number*, OF THE INDIVIDUALS OF WHOM THE COMMUNITY IN QUESTION IS COMPOSED·

INCLUDING

OBSERVATIONS

RESPECTING THE *HANDS*, BY WHICH THE ORIGINAL DRAUGHT OF A WORK OF THE SORT IN QUESTION, MAY, WITH MOST ADVANTAGE, BE COMPOSED:

ALSO,

INTIMATION, FROM THE AUTHOR, TO THE COMPETENT AUTHORITIES IN THE SEVERAL NATIONS AND POLITICAL STATES,

EXPRESSIVE OF

HIS DESIRE AND READINESS TO DRAW UP, FOR THEIR USE RESPECTIVELY,

THE

ORIGINAL DRAUGHT OF A BODY OF LAW,

SUCH AS ABOVE PROPOSED.

ORIGINALLY PRINTED IN 1822.

ADVERTISEMENT.

THIS PAPER CONSISTS OF TWO PARTS: —

Part I. Arguments: *or Positions, with Proofs by Reasons.*—This Part contains in twelve Positions a more particular explanation of the nature of the proposed work, together with the grounds on which, in point of argument, the proposal rests. These Positions form the heads or titles of so many sections, from the matter of which they respectively receive their proofs.

Part II. Testimonials.—This Part consists of divers papers, expressive of the conceptions entertained by divers constituted authorities, in divers States, in relation to the proposed Author: conceptions, concurring, as supposed, in affording a presumption in favour of his aptitude, with relation to the proposed work.

It will be for each reader to choose on which of these two Parts he will bestow the first glance.

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ARGUMENTS.

POSITIONS, WITH REASONS FOR PROOFS.

CODIFICATION PROPOSAL.

PART I. — ARGUMENTS.

POSITIONS, WITH REASONS FOR PROOFS.

SECTION 1.

In every Political State, the greatest happiness of the greatest number requires, that it be provided with an all-comprehensive body of law. *All-comprehensiveness, practicable, and indispensable.*

IN the political state in question, whatsoever be the effect, which, in pursuance of any regard, entertained, or professed to be entertained, for the greatest happiness of the greatest number, it has been endeavoured to produce, by means of any expression given to the will of any person or persons exercising any of the powers of government, — only in so far as that will has been made known to the individual on whose conduct the production of that effect in each individual instance depends, can existence be given to such effect. If, in the instance of any one such effect, the notification, as above, of the correspondent will, is necessary to the existence of the effect, so is it in the instance of every other such effect. If, in this respect, there be any difference, — by him by whom it is discovered let it be declared.

This is what no man will attempt. Yet are there but too many men, to whom the idea of any such all-comprehensiveness, on the part of the rule of action, is an object of aversion and even abhorrence.

Who are they? A set of corruptionists, and a correspondent set of dupes.

1. First as to corruptionists.

In proportion as, in the whole field of law, a covering composed of real law is wanting, — room is left for different sets of men, to set up, each of them, in the character of *law*, this or that article of purely fictitious law, framed by them respectively on each occasion, in a shape adapted to whatever particular and sinister purposes they have, on that occasion, set themselves in pursuit of. There are two distinguishable classes of men, to whose sinister purposes every such void space in the body of the law is subservient. One is, the lawyer class: the other is the class of party men in general; and in particular, party leaders. Were any such all-comprehensive code in existence, and executed as it ought to be and might be, seldom would there be any such question as a question of law: never any other question of law than a question concerning the import of this or that portion of the existing text of the really existing law. In the case of the lawyer class, the need which a man has of void spaces in the body of the law, applies to the whole field of law, and every part of it. In the case of the party man, it is to the constitutional branch of the law that the convenience afforded by those void spaces to his purpose more particularly applies. Wherever real law is silent, the course he takes is this:— He sets up an article of imaginary law framed by him for the purpose, and by loud and confident assertion, supported by such analogical arguments as he can contrive to muster up, endeavours to produce, in the minds of his hearers or readers, the belief of a conviction on his part, that this sham law of his own fabricating is so much real law. If he be of the party in power, it is most commonly for the defence of his own party that the pretended law is fabricated: if he be of the party out of power, it is most commonly for the attack of the party in power that the fabrication has place.

Behold, then, in the above two classes of men, the *corruptionists*—the *knaves*. To their sinister interest it is, or is believed to be, conducive, that the rule of action should be kept in the completest state of uncertainty and confusion possible.

The *dupes* are those on whose minds the knaves have succeeded in producing, in relation to this matter, a persuasion which in their own minds has no existence. This is, that the composition of a code thus comprehensive is impossible. Of any attempt to prove the inutility of it, the absurdity would be too palpable. Remains, then, this notion of the pretended impossibility as the sole resource.

The strength of the argument lying in the ignorance and weakness of those to whom it is addressed, no direct mode of combating it with effect does the nature of the case admit of, except by the substituting appropriate knowledge and strength of mind to that ignorance and that weakness.

This not being within the reasonable hope of any man, the only sort of argument that presents any chance or prospect of success is

this: — Let the endeavour to produce a code of this all-comprehensive description be employed: if it fails altogether, you are but as you were: so far as it succeeds, so far at least you will be the better for it: instead of a counterfeit arrangement, fabricated on the occasion by this or that influential hand for its own particular and sinister purpose, you have a real arrangement; an arrangement, the knowledge of which, whatsoever has been its purpose, has been given, or at any rate may have been given, and given in time, to those whose lot it had taken upon itself to dispose of: — the knowledge of it, and thereby so far the power to conform to it. To give to you, whoever you are, this means of safety, is the endeavour of every public man whose end in view is the greatest happiness of the greatest number. To withhold it from you, is the endeavour of the corruptionist in every one of his shapes: to keep everything that is dear to you in the state of the most perfect insecurity possible. Why? Because in that insecurity he beholds an efficient cause of his own power: by every increase you get to your security, that power of his is lessened. It is because he is so fully conscious of the possibility of such a work, and accordingly so fearful of seeing it executed, that he is so earnest with you to persuade you to regard the accomplishment of it as impossible: to regard success as impossible, and thence every proposal for the endeavour as absurd. Supposing it really impossible, he would be without motive for taking so much pains to make you regard it as such.

The *possibility* — is it proved — the *impossibility* disproved — by the *fact?* Where the fact has place, are men in general satisfied or dissatisfied with it? Ask a citizen of the United States, whether it would be agreeable to him to see his constitutional code done away, and, throughout the whole field of law, party men and lawyers left at liberty to vociferate, upon each occasion, *the law is so and so, the law is so and so:* — to vociferate thus — as it would be left for them to do, and as they would not fail to do, when the truth is, that, by the very supposition, there is no such thing as any law about the matter. Ask him where the impossibility is, of doing that which, by that same constitutional code, has actually been done.

Well then — if, in the giving a covering of this sort to the whole field of constitutional law, there has been nothing impossible, why should there be in giving a like covering to any other part of the field of law? to the field of *distributive*, or, as the phrase is, *civil* law — to the field of *penal* law — to the field of judicial procedure?

Ask the Spaniard the like question.

Ask either of them — ask even the Englishman — seeing that so many parts of the field of law are actually covered by real law — what is there that should hinder the other parts, any or all of them, from receiving a like covering?

In every other case, the more strenuous a man's endeavour is to render his work complete, is not the probability of its being rendered so the greater? Is it that the more studiously a man abstains from adding anything to it, the nearer to completeness it will be? Does not a more complete come nearer to an all-comprehensive than a less complete work does?

As to the mode of securing this same property of all-comprehensiveness to the several operations that required to be performed on the several parts of the field of law in the penning of a code, some instructions for this purpose may be seen in Part the Second of the work intituled *Chrestomathia.**

In a word, be the occasion what it may, if *in specie*, the language cannot always be all-comprehensive — say rather all-expressive — yet such *in genere* it may always be: and, as every individual is contained within its species, so is every species within its genus.

Section 2.

The greatest happiness of the greatest number requires, that such body of law be throughout accompanied by its RATIONALE: an indication of the REASONS on which the several arrangements contained in it are grounded. *Rationale, though unexampled, indispensable.*

Of this Rationale, the uses may be thus enumerated: —

1. To the draughtsman himself, it will serve at once as a *guide* and as a *bridle:* as a *guide*, for directing his understanding and active talent in the right track, by keeping at all times in his view the universal goal or object, towards which, as above, it ought in every part to be directed.

2. As a *bridle*, by keeping in his mind the remembrance, that, in case of his giving place to any arrangement, for which no sufficient

* Take a man who has hitherto belonged to the class of dupes: if, in his body, he has a mind capable of reflection, and will allow himself a little time for making use of it, the following considerations may serve him for a clue. By words such as *state of things*, *event*, *things immoveable*, *things moveable*, *action*, *forbearance*, *misdeed*, *obligation*, *command*, *prohibition*, *permission*, *condition*, *right*, *punishment*, *reward* — by these, with the addition of a few others, not only has the whole field of legislation, but the whole field of possible thought and action, been covered. Well then, if by these, why not by others of less extensive imports? — of imports included in the imports of these several words respectively? by others of this or that less extensive import, according as the occasion serves?

reasons are given, while against it, reasons, suggested by its relation to that same universal end, will be likely to present themselves to other eyes, — he may have a timely view of the condemnation, to which, at the hands of public opinion, he will in such case subject himself: as also, in the opposite case, of the crown of applause and gratitude, which, at the hands of that same universal tribunal, awaits his head.

3. To the subject-citizen, it will serve all along as *a key* — an instrument of *interpretation:* of interpretation, for the solution of all such difficulties and doubts, as might otherwise have place, in regard to the import of the terms employed.

4. To the subject-citizen, again, it will serve as *a cordial* — a source of *satisfaction;* showing to him, in a point of view not less advantageous than correct, the character of the government under which he lives: showing all along, that it is only as an indispensable means of preponderant benefit to all, that the burthen imposed upon any one is, in any part of it, so imposed.

5. To the subject-citizen, again, it will, taken all together, according to the extent occupied by it in the field of morals and legislation, serve as a *code of instruction, moral* and *intellectual* together: applying itself to, and calling into continual exercise, the *intellectual* faculty; and not merely, as in the case of a code of ordinary structure, applying itself to the *will*, and operating upon that faculty, by no other means than the irresistible force of a superior will, employed in the way of *intimidation* or *remuneration:* intimidation of necessity for the most part: intimidation, with only a small admixture of remuneration, in a comparatively small number of cases, and to a comparatively minute extent.

6. To the judge, in *his* situation, it will afford the same *facility, guidance, satisfaction*, and *instruction*, as to the subject-citizen in *his:* it will, moreover, in proportion to its clearness, correctness, and completeness, apply to his mouth, to keep him all along from turning aside into the track of corrupt or arbitrary decision — a *bridle:* an implement, which, in *his* career, is so necessary. In so far as the course he takes is confined to the track of his duty as thus pointed out, the very bridle will moreover afford him a *support:* a support against whatever ungrounded accusations and imputations his situation exposes him to.

7. In relation to the legislator, acting as such on the occasion here in question — in relation to the legislator, that is to say, to him who possesses or shares in the power of giving binding force to the work of the draughtsman, as above, — it will render service in all those several shapes, in which it has been thus officiating, in relation to the draughtsman, the subject-citizen, and the judge: — in the several shapes (that is to say) of a *guide*, a *bridle*, an instrument of *interpretation*, a source of *satisfaction*, and a body of moral and intellectual *instruction*.

8. To the mouth of the legislator, it will, in all succeeding times, keep applied that sort of *bridle*, and the only sort which, without the grossest absurdity, could either be attempted to be so applied to that supreme functionary, or by him submitted to. To the body of arrangements, to which it is attached, and to each distinguishable arrangement in particular, it will thus, in proportion to their aptitude respectively, form a sort of *anchor*, bestowing upon them respectively, at all times, that degree of *fixedness*, and that alone, which, for the greatest happiness of the greatest number, they ought respectively to have.

In this character, it will form a striking contrast with the only sort of *steadiment* that has ever yet been applied to them: with that sort of *steadiment*, which, with such unhappy frequency, it has been customary to apply to them: viz. that which is composed of an ungrounded expression and effusion of arbitrary will: an instrument not more remarkable for its weakness, than for the absurdity and presumption manifested in the construction of it: an attempt, on the part of the legislator, not only when less experienced and less advised, to tyrannize over himself when more experienced and more advised, — but, when rendered by death as deaf and impotent as when alive he was blind, to tyrannize over his enthroned, and vigorous, and hearing, and seeing successors.

9. Under a representative government — the only sort of government which deserves the name — under a representative government, to constituents in the character of *electors*, it will afford, for judging of the appropriate aptitude of proposed *representatives, a test*, than which, in so far as, by conduct, under and in relation to the body of the laws, occasion has been afforded for the application of it, none more apt can be afforded by the nature of the case. "On such or such an occasion, when an arrangement to such or such an effect was proposed for confirmation or alteration, what was your vote? what was your speech? when, in support of the arrangement proposed to be altered, there are such and such *reasons*, what *counter reasons* did you then offer? what are you able and disposed *now* to offer?" Such is the scrutiny, to which his conduct while in office might, by the lights in question, be on each occasion subjected.

SECTION 3.

The greatest happiness of the greatest number requires, that those REASONS be such, throughout, as shall show the conducive-

ness of the several arrangements to the all-comprehensive and only defensible end thus expressed. *Rationale, indicates conduciveness to happiness.*

EXCEPT in so far as they do this, whatsoever portions of discourse are given under the name of *reasons*, do what is nothing to the purpose: the name of *reasons* is not with any use or propriety applicable to them. Anything that has no influence on happiness, on what ground can it be said to have any claim to man's regard? And, on what ground, in the eyes of a common guardian, can any one man's happiness be shown to have any stronger or less strong claim to regard than any others? If, on the ground of delinquency, in the name of punishment, it be right that any man should be rendered unhappy, it is not that his happiness has less claim to regard than another man's, but that it is necessary to the greatest happiness of the greatest number, that a portion of the happiness of that one be sacrificed.

Reasons, indicative of this conduciveness, are reasons derived from the principle known by the name of the *principle of utility:* more expressively say, *the greatest-happiness principle.* To exhibit these reasons, is to draw up the account between law and happiness: to apply arithmetical calculations to the elements of happiness. *Political arithmetic* — a name that has by some been given to *political economy* — is an application, though but a particular and far short of an all-comprehensive one, of arithmetic and its calculations, to happiness and its elements.

To convey a sufficiently clear, correct, and comprehensive conception of what is meant by *reason*, or *a reason*, when derived from the *principle of utility*, and applied to law, a few words of explanation seem indispensable.

The elements of happiness are *pleasures* and *exemptions from pains:* individual pleasures, and exemptions from individual pains.

The *magnitude* — the *greatness* — of a pleasure, is composed of its *intensity* and its *duration:* to obtain it, supposing its intensity represented by a certain number of degrees, you multiply that number by the number expressive of the moments or atoms of time contained in its duration. Suppose two pleasures at the same degree of intensity, — give to the second twice the duration of the first, the second is twice as *great* as the first.

Just so is it with pains: and thence with exemptions from pains.*

The magnitude of a pleasure, supposing it present, being given, — the *value* of it, if not *present*, is diminished by whatever it falls short of being present, even though its *certainty* be supposed entire. Pleasure itself not being ponderable or measurable, to form an estimate of this diminution, take the general source, and thence representative, of pleasure, viz. *money*. Take accordingly two sums of the same magnitude, say twenty pounds, the one sum receivable immediately, the other not till at the end of [10] years from the present time, interest of money being (suppose) at 5 per cent. — the value of the second sum will be but half that of the first; namely, ten pounds: in the same case, therefore, will be the value of two equal pleasures receivable at those several times. Just so is it with pains: and thence with exemptions from pains.

The magnitude of the pleasure derived from the source in question, supposing it present, being given — as also the value to which it is reduced by *distance* as above — the value of it is subjected to a further reduction by whatever it is deficient in, in respect of *certainty:* suppose, then, that at the time for its being received, as above, the probability, instead of being as infinity to one, *i. e.* at a certainty, is but as 1 to 2. On this supposition, the value of it is subjected to such further reduction, as leaves it no more than the half of that which it would have been, had the receipt of it at that remote period been regarded as *certain:* instead of twenty pounds, as by the first supposition, and ten pounds, as by the second supposition, it will now be no more than five pounds. Just so is it with pains, and with exemption from pains.

So much as to diminution of value by remoteness and uncertainty: now as to increase by *extent*.

Take any two sources of pleasure: the one productive of pleasure to one person and no more: the other productive of pleasure, the same in magnitude and value, to two other persons and no more. In the eyes of a common trustee, intrusted with the interests of all three, and acting according to his trust, the value of the second source of pleasure will be just twice as great as that of the first. As a pleasure comes to be experienced by a greater and greater number of persons in a community, it *extends* over a larger portion of that same community: in a political community, the *extent* of a pleasure is as the *number* of the persons by whom it is experienced.

Just so it is with pains and exemptions from pains.

Instead of pleasure itself, to show how an estimate might be formed, of the diminution its value is subjected to by diminution of propinquity and certainty. it became necessary to substitute to pleasure itself some external object known by experience to be of the number

* A *medicine*, in so far as it produces the desired effect, is an instrument of exemption from certain pains. An instrument of political security in any shape, is an instrument of exemption from certain pains. Of the one as of the other, the value, at any point of time, is as the sum of the pains it has exempted men from, deduction made of the pains it has produced, and the pleasures it has excluded.

of its *sources* or say its *causes:* for example, *money*. But, how indubitable soever the title may be, of any object to be considered as belonging to the list of these same causes, the magnitude of the pleasure produced by it does not increase in so great a ratio as that in which the magnitude of the cause increases. Take, for instance, the same cause as before: namely *money*. Take thereupon any individual: give him a certain quantity of money, you will produce in his mind a certain quantity of pleasure. Give him again the same quantity, you will make an addition to the quantity of his pleasure. But the magnitude of the pleasure produced by the second sum will not be twice the magnitude of the pleasure produced by the first. While the sums are small, the truth of this position may not be perceivable. But let the sums have risen to a certain magnitude, it will be altogether out of doubt; and it will then be matter of mathematical certainty that the diminution cannot have been made to take place in the case of the greatest quantity without having been made to take place, to a proportionable amount, in the case of the several lesser quantities.

Take, for example, on the one hand, a labouring man, who, for the whole of his life, has a bare but sure subsistence: call his income £20 a-year. Take, on the other hand, the richest man in the country; who, of course, will be the monarch, if there is one: call his income £1,000,000. The net quantities of happiness, produced by the two incomes respectively — what will be their ratio to each other? The quantity of money received annually by the monarch is, on this supposition, 50,000 times as great as that received, in the same time, by the labourer. This supposed, the quantity of pleasure in the breast of the monarch will naturally be greater than the quantity in the breast of the labourer: Be it so. But by how much — by how many times greater? Fifty thousand times? This is assuredly more than any man would take upon himself to say. A thousand times, then? — a hundred? — ten times? — five times? — twice? — which of all these shall be the number? Weight, extent, heat, light — for quantities of all these articles, we have perceptible and expressible measures: unhappily or happily, for quantities of pleasure or pain, we have no such measures. Ask a man to *name* the ratio, — if he knows what the purpose is, his answer will vary according to the purpose: if he be a poet or an orator, and the purpose of the moment requires it, with as little scruple will he make the labourer's happiness superior to the monarch's, as inferior to it. For the monarch's, taking all purposes together, *five times* the labourer's seems a very large, not to say an excessive allowance: even *twice*, a liberal one.

After it has thus been applied to the case of the richest individual in the country, apply the estimate to the case of the next richest, suppose the man with £200,000 a year, and so downwards. If the monarch's pleasure is not in any greater ratio to the labourer' than that of 5 to 1, the excess of this next richest man's pleasure, as compared with the labourer's, cannot be so great. Carry the comparison down through the several intermediate quantities of income, — in the account of pleasure, the balance in favour of the non-labourer as against the labourer will thus be less and less.

As it is with *money*, so is it with all other sources or causes of pleasure: *factitious dignity*, for example. Give a man a ribbon, you will produce in his mind a certain quantity of pleasure. To this ribbon add another, you may add more or less to the former quantity of his pleasure. You may *add* to it: but you will not *double* it. Cover him with ribbons, as, at the expense of his starving subjects, some of the King of England's servants are covered with gold lace, till the colour of the coat is scarcely visible — add even money in proportion — still will it be matter of doubt whether the quantity of pleasure in his mind will be double the quantity existing in the mind of the labouring man above mentioned.*

* On the ground of these considerations, in the author's work on legislation, on the field of the civil, or say the *distributive* branch of law, in settling the particular ends or objects of pursuit proper to be on that occasion kept in view, in the distribution made of benefits and burthens — on the ground of these considerations it is, that, to the objects expressed by the words *subsistence*, *abundance*, and *security*, was added that which is expressed by the word *equality*. For, on the occasion of the arrangements by which this distribution is effected, it is no less material that this object should be added to the list, than it is necessary that those others should be provided for and take the lead. *Absolute equality*, is that sort of equality which would have place, if, of the several benefits, as also of the several burthens, each man had exactly the same quantity as every other man: by *practical equality*, understand whatsoever approach to absolute equality can be made, when provision as effectual as can be made has been made for those three other particular ends of superior necessity. In regard to *security*, understand likewise, that, amongst the adversaries, against whose maleficent designs and enterprises security requires to be provided, — are not only foreign enemies and internal *malefactors* commonly so called, but moreover those members of the community, whose power affords them such facilities for producing, with impunity, and on the largest scale, those evils, for the production of which, upon the smallest scale, those who are without power are punished by them with so little reserve. As to *absolute equality*, it would be no less plainly inconsistent with *practical equality* than with *subsistence*, *abundance*, and *security*. Suppose but a commencement made, by the power of a government of any kind, in the design of establishing it, the effect would be — that, instead of every one's having an equal share in the sum of the objects of general desire — and in particular in the means of *subsistence*, and the matter of *abundance*, no one would have any share in it at all. Before any division of it could be

The footing, upon which the process of reasoning is thus placed by the principle of utility, is not only the only true and defensible footing, but the only one (it will be seen) on which any tolerable degree of precision can have place: and, even in so slight a sketch as the present, already it may have been observed, how near to mathematical the degree of precision is, in this case, capable of being made. Considered with reference to an *individual*, in every element of human happiness, in every element of its opposite unhappiness, the *elements*, or say *dimensions* of *value* (it has been seen,) are four: *intensity, duration, propinquity, certainty;* add, if in a political community, *extent*. Of these five, the first, it is true, is not susceptible of precise expression: it *not* being susceptible of measurement. But the four others *are*.

By this mode of reasoning, the doctrine of proportions is naturally introduced, and, on every occasion, held up to view. *In so far as*, is the formulary by which the case thus taken is announced, and the requisite effect produced. Without thus adverting to proportions, say absolutely and simply, of the thing, whatever it be — *it is so and so*, or *it is not so and so*—in either case, if, in your *bucket*, as it comes out of the *well*, you have more or less of *truth*, no one can say, for no one has inquired, in how large a proportion *falsehood* may not have come mixed with it.

To return to the application thus made of arithmetic to questions of utility. How far short soever this degree of precision may be, of the conceivable point of perfection — of that which is actually attained in some branches of art and science, — how far short soever of *absolute* perfection, — at any rate, in every rational and candid eye, unspeakable will be the advantage it will have, over every form of argumentation, in which every idea is afloat, no degree of precision being ever attained, because none is ever so much as aimed at.

Till the principle of utility, as explained by the phrase *the greatest happiness of the greatest number*, is, on each occasion, if not explicitly, implicitly referred to, as the source of all reasoning, — and arithmetic, as above, employed in making application of it, everything that, in the field of legislation, calls itself *reasoning* or *argument* will — say who can in what large proportion — be a compound of nonsense and falsehood; both ingredients having misrule for their effect, after having, in no small proportion, had it for their object. In words, opposite to one another in character, but all of them indeterminate in quantity, may be seen the ordinary instruments of debate:—the weapons with which the warfare of tongues and pens is, in a vast proportion, carried on. In penal law, *justice* and *humanity* — in finance, *economy* and *liberality*— in judicial procedure, *strictness* and *liberality* of *construction* — in constitutional law, *liberty* and *licentiousness*. It is with trash such as this, that corruptionists feed their dupes, teaching them, at the same time, to feed one another with it, as well as themselves. It is with one part of it in their mouths that the holders of power pass for wise, and the hunters after it for eloquent. Thus cheap is the rate, at which, in any quantity, each combatant finds matter of laud for those of his own side of the question (not forgetting himself,) and matter of vituperation for his antagonists. It is by nonsense in this shape that the war, made upon the *principle of utility* by *ipsedixitism* and *sentimentalism*, with or without rhyme, is carried on.

In the titles, with which the several sections of this paper are headed, it may be observed as a singularity, that the words, *The greatest happiness of the greatest number*, occupy the first place. The use of them is — to serve as a memento, that, whatever be the subject of consideration, — in so far as it belongs to the field of government, matters be so ordered, as that the only defensible end of government shall never be out of sight.

To this instructive phrase, substitute any of those unmeaning terms, to which, under the lash of perpetually-accusing conscience, the enemies of good government are, at every turn, constrained to have recourse. Substitute, for example, the word *legitimacy*, or the word *order*, and say — *maintenance of legitimacy* requires, or *maintenance of order* requires, that the state be provided with an *all-comprehensive* — with a *rationalized* code of law — that, in the *rationale*, the several reasons, or sets of reasons, be contiguously attached to the several arrangements to which they apply, and so forth. The substitution made, see then, ask yourself, what *guide*, what *check*, is furnished by the nonsense thus substituted to useful sense? Why then is *legitimacy* anywhere the word? Because, owing to intellectual blindness and weakness, absolute monarchy is still *established* by law in so many more countries than any better form of government is. Why is *order* the word? Because, while the best government can no more exist without *order* in some shape or other than the worst, the worst *order* is as much *order* as the best. In the worst government, *order* of some sort is *established*. Does it follow that it must be *good*, because it is *established*? Must everything be good that is established? What is thus said of the body politic, apply it thus to the body natural. Take a man in whose head

made, the whole would be destroyed: and, destroyed, along with it, those *by* whom, as well as those for the sake of whom, the division had been ordained.

In a word, where *equality* is spoken of as one of the particular ends, in the attainment of which the distributive branch of law ought to occupy itself,—the sort of equality kept in view should be that which has place in the *Anglo-American United States:* meaning always those in which slave-holding has no place.

or stomach the *gout* is *established:* take a man in whose bladder a *stone* is *established.* Established as it is, does the gout, does the stone, contribute anything to his happiness?

Good is pleasure or exemption from pain: or a cause or instrument of either, considered in so far as it is a cause or instrument of either.

Evil is pain or loss of pleasure; or a cause or instrument of either; considered in so far as it is a cause or instrument of either.

Happiness is the sum of pleasures, deduction made or not made of the sum of pains.

Government is in each community the aggregate of the acts of power exercised therein, by persons in whom the existence of a right to exercise political power is generally recognized. Every act of power, in the exercise of which *evil* as above is employed, is itself an evil: and, with small exceptions, no otherwise than by such acts can the business of government be carried on. No otherwise than through the instrumentality of punishment can even such parcels of the matter of *good* as are employed in the way of reward, be in any comparatively considerable proportion, got into the hands by which they are applied.

To warrant the employment of *evil*, whether in the character of punishment or in any other character, two points require to be made out: 1. That, by means of it, *good* to a preponderant amount will be produced; 2. That, at any less expense of *evil*, *good* in so great a proportion can not be produced.

In every *rationale*, both these points ought to be constantly kept in view: in the rationale hereby offered, they will be constantly kept in view.

No otherwise than by reference to the *greatest-happiness* principle, can epithets such as *good* and *evil*, or *good* and *bad*, be expressive of any quality in the *act* or other *object* to which they are applied: say an act of an individual: say an act of government: a *law*, a *measure* of government, a *system* of government, a *form* of government. But for this reference, all they designate is — the *state of mind* on the part of him in whose discourse they are employed.

When, and in proportion as, this standard is employed as the standard of reference, — then for the first time, and thenceforward for ever, will the import of those same perpetually employed and primarily important adjuncts, considered as indicative of qualities belonging to the objects they are applied to, be determinate.

SECTION 4.

The greatest happiness of the greatest number requires, that, of this Rationale, the several parts be placed in the most immediate contact with the several arrangements to which they respectively apply. ***Rationale, interwoven, not detached.***

1. Instances have appeared, in which, in the place of sets of reasons, attached, each set, to a correspondent arrangement taken by itself, — in place of this perpetually interwoven accompaniment, — a general preliminary discourse has been employed, prefixed, the whole of it, to this or that portion of the body of the laws. Forming a body apart, this substitute to sets of separately and contiguously attached reasons, will not, in any tolerable degree, fulfil any one of the purposes above mentioned.

Neither in respect of clearness, of correctness, nor of completeness, will it be able to stand any comparison with them.

Taken together, it will constitute a work, altogether distinct and detached from the work to which it professes to give a support, and of which it professes to make a part.

In the case of no one of the several classes of persons in question — neither in the case of the draughtsman, nor in the case of the subject *citizen*, nor in the case of the judge, nor in the case of the legislator, will it operate with any considerable effect, towards any of the purposes above enumerated: in particular, neither to the feet of the subject citizen will it be a *lamp*, nor in the case of the draughtsman, the legislator, or the judge, a *bridle* to the mouth. In the mind of the reader, losing their appropriate contiguity, the several parts of it will lose their application, if they have any: their application, their import, their binding force, their instructive effect.

2. When the first of the codes established by Buonaparte was first published — (it was the penal code) — attached to it was a sort of accompaniment, in the form above mentioned, viz. that of a separate and preliminary discourse. It was composed of a tissue of vague generalities, floating in the air, in the character of *general principles.* In that form was it delivered, and not in the form of reasons, — reasons applied, in the discourse, to the several particular arrangements, to which, in each man's mind, they were respectively meant to apply? In that nebulous form, — and why? Because this rule of action, not having for its main end in view the above-mentioned all-comprehensive and only proper end, the greatest happiness of the greatest number, — not having for its main end any other object than the individual happiness of the individual despot of whose will it was the expression, and from whose power it was to derive its force, — the tenor of it was, from first to last, in numerous points, such, for which no *reasons* that could bear the light could be given: and it was for this same cause that a clear arrangement, which he knew of, and

which had passed under his review, had been actually put aside: yes, contained as it was in a work, his approbation of which had been pointedly declared,* put aside, and an arrangement, which had for its undeniable purpose the organization of an all-comprehensive and appropriate system of confusion, was employed in preference.

The one put aside? Why? Because, having throughout for its object the greatest happiness of the greatest number, it took throughout, for its principle or source of distribution, the manner in which, by the several acts in question, that happiness is effected. The other employed? Why? Because, having for its main object the personal interest of the lawgiver, as above, it had for its principle or source of distribution, the manner in which, in respect of those acts, it was *his will*, because, in his view of the matter, it was *his interest*, according to his own conception of his interest, that men should be dealt with. Offences made punishable in the highest degree,—offences made punishable in the next highest degree but one—offences made punishable in the lowest degree: such has been, such continues to be, the classification—the logic—of tyranny and misrule, every where. Look for example to the matchless constitution—the envy and admiration of the world. Would you learn the difference in the nature of different classes of punishable misdeeds? It is from the intimation given of the several masses of punishment attached to them, that you must guess at it as well as you can: this must be your clue; for there is no other. It is from the words *treason*, *unclergyable felony*, *clergyable felony*, *premunire*, and *misdemeanor*.

3. Such being the principle of arrangement,—instead of *reasons*, formed by application of the principle of utility, and making reference throughout to the only legitimate end,—reasons all along particularly apposite to, and placed in contiguity with, the several particular arrangements they were meant to be applied to,—instead of any such really useful accompaniment, came the above-mentioned preliminary discourse: a glittering object, floating in the air, and composed of clouds. Why any such preliminary discourse? Answer: that, in the eyes of the prostrate multitude, a display might be made of extent and profundity of reflection: that where, in comparison of what might have been done, little good was really done, much might be thought to be done.

4. In the newly-erected kingdom of Bavaria—erected under that same ever-selfish, though never needlessly cruel despot's influence—under that same influence, a penal code, with the same arrangement, and the same sort of accompaniment, was established.†

5. Not many years ago, in a political state not altogether so ample in extent, the above-mentioned natural principle of arrangement having been adopted,—the attaching of a *rationale*, samples of which lay on the table, was proposed. It was not accepted. For what alleged reason was it that reasons were not to be admitted? For this reason—that *reasons* are *dry things*. Gay and amusing in its own nature, a code of law would be divested of those its pleasant qualities, if any such dry matter as that which is composed of *reasons* were intermixed with it. This gay reason, is it possible that it should have been the real one? Impossible. What, then, could have been the real one? What but this—that, in the place of the sort of matter thus cast out,—those by whom it was cast out having to insert some matter of their own, by which no such test as that of reason, deduced as above from the greatest-happiness principle, could have been endured,—having some object of particular and latent interest—of interest-begotten prejudice—of authority-begotten, or of habit-begotten prejudice or caprice,—to stick in—or something good, to which those powers were adverse, to keep out—thus it was, that against an inmate so inconvenient and troublesome as *reason*, the door was shut. If any cause that can better bear the light can be found, it were well that it should see the light: if, in the eyes of those by whom this exclusion was effected, it be honourable to them, it were pity the honour should not be reaped by them. Invitation is here given to them to produce their names, and thus to come forth and claim it.

6. To the draughtsman principal in labour and eminence, permission was (it is said) given to give *reasons:* but these reasons were to be *his*, and not the legislator's; and, lest they should be too clear, too closely apposite, too instructive,—they were to put off the garb of *particular reasons*—they were to be rarefied and sublimated, and confounded as above, into the form of a general preliminary discourse.

In a lately published tract on the Spanish proposed penal code,‡ may be seen the sort of notice taken by the draughtsman in the Cortes, of the demand that (it seems) had on that occasion been made, for something in the nature of a *rationale*, and the sort of apology by which the giving satisfaction to that demand was evaded. So far as regarded the legislators themselves, assurance was given to them, that every demand of that sort

* "*C'est un ouvrage de genie*" were the words, as almost immediately reported to the author of this address. Not to speak of discernment, such was the candour and magnanimity which, in the mind of that extraordinary man, embellished his selfish prudence.

† See Papers on Codification, &c. p. 514.

‡ Letters to Count Toreno, &c. Letter V.

stood completely superseded, by the consummateness of the wisdom of those same legislators: and, as to the rest of the people — of that people for whose benefit the demand for this instrument of elucidation, justification, instruction, and satisfaction, might by some be thought to have place — that people from whom the draughtsman, and those colleagues of his whom he was addressing, derived all the authority they could pretend to — no such objects (it should seem) happened to present themselves to the draughtsman's view.

Whatsoever cause for *regret* the omission may in that case have afforded, no just cause of wonder can it afford in any case. The easiest of all literary works, bulk for bulk, is a code of law stark naked: a code altogether bare of reasons in any shape: next to the easiest, a code with no other habiliment than a separate tissue of vague and commonplace generalities, with a gloss of reason on the surface of it. Not only the most important, but the most difficult of all human works, may be safely pronounced, an uniformly apt and all-comprehensive code of law, accompanied with a perpetually-interwoven *rationale*, drawn from the *greatest happiness* principle, as above.

Section 5.

The greatest happiness of the greatest number requires, that for the function exercised by the drawing of the original draught of such a code, the competitors be as many as, without reward at the public expense, can be obtained: and so, for that of proposing alterations in such draught as shall have been adopted. Plan for obtaining competitors.

The contents of the preceding sections have for their subject the characteristic *nature* and *plan* of the here proposed work.

The contents of this and the succeeding sections have for their subject the choice of *hands* for the execution of it.

On this occasion, never be it out of mind, that the work in question is — *not* a body of law in its *ultimate* state — in that state in which it receives the sanction of the sovereign power: — it is nothing more than the *original draught*, drawn up in the view of its receiving that sanction as above: of its receiving it indeed — but eventually only: and not till after it has undergone all such alterations as, by any of the several persons among whom respectively the sovereign power in matters of legislation is shared, shall have been proposed, — and, by those whose concurrence is necessary to the application of that sanction, adopted: in a word, by the several *authorities* in that behalf *constituted*.

Yes; if, while, from any one or more individuals, an original draught, or any number of such original draughts, were admitted to the exercise of this function, all other persons were excluded from it, or even all persons other than those among whom the power of sanctionment, as above, is shared; Yes: in such a state of things, — were it the state of things here proposed, — true it is, that by the admission given to some, coupled with the exclusion put upon others, not only would a power be created, but the very power which, in consideration of its unnecessary and mischievous magnitude, it is the object of the very arrangement here proposed, to exclude.

On this part of the subject, six principal positions have been the result of the inquiry: in the table of contents they may have been seen at length. They are here recalled to view in brief, each of them in company with a correspondently brief intimation of the principal considerations or reasons by which it was suggested. The first of them, with a development of its *reasons*, constitutes the matter of the present section: the rest will, in the like manner, occupy the five next succeeding ones.

I. *Admission universal.* — Competitors, for the function exercised by the furnishing of the original draught, as numerous as possible.

Reasons. — 1. Chance, for the greatest possible degree of aptitude on the part of the work, *a maximum:* to sinister interest, and other causes of inaptitude, on the part of those on whom the quality of the work in its ultimate state depends, the strongest *bridle* applied that the nature of their situation admits of.

2. *School for legislative and other functionaries, thus instituted.*

II. *Remuneration at an additional public expense, none.* — Reason 1. Avoidance of inaptitude, on the part of the work, through patronage and favouritism: also, through precipitation according to one mode of payment; through delay, according to another: delay, ending perhaps in final non-performance.

III. *Hands, not more than one.* — Reason 1. Avoidance of inaptitude in the work, by reason of moral inaptitude in the workman, through want of responsibility for bad workmanship, and want of encouragement for good. 2. Avoidance of inconsistency: of want of unity of design, and symmetry of execution, as between part and part.

IV. *Hands, not only single, but known to be so.* — Reason. Else the responsibility and the encouragement deficient.

V. Not only the hand single, and known to be so, but *whose it is, known.* — Reason. Else the responsibility and the encouragement still deficient.

VI. The hand of a *foreigner*, not only admissible but *preferable*. — Reason. Exemption from local sinister interests and preju-

dices: deficiency in local knowledge being easily amendable by native hands, in the course of the progress of the work, through the constituted authorities.

Note, that in a representative government, the hands ordinarily employed in the providing of the original draught are those of a *legislation committee.* With the exception of the second point, namely, the *gratuitousness* of the service, the desirable results, referred to by the above reasons, are, in this case, all of them, either foregone or lessened. Gratuitous in this case the service naturally and commonly is in appearance unquestionably: but to the degree in which it may be otherwise in effect, no bounds can be assigned: in the nature of the case there are no others, than those which apply to the quantity of depredation and oppression, exercisible, in the community in question, by a government over which the people have no more than a nominal controul, compared with that exercisible where the people have a real and efficient controul: a few restraints on the liberty of the press and public discussion may suffice to establish the difference.

These are but faint anticipations. For placing in their full light all these several points, considerable development and explanation will be unavoidable.

1. As to the proposed *universality.* By it would be instituted a mode of codification, which, for distinction, might be styled *the open mode.*

The following slight sketch may serve to convey a general conception of it: —

In the name of the constituted authorities, or of the legislative body alone, let invitation be given to all persons without distinction, who, (with the exception of the members of the legislative body during the time of their serving in that capacity,) regarding themselves as competent, may feel inclined to transmit to the legislative body, each of them a general sketch or outline of the proposed original draught of a work of the sort in question: with a sample or samples, of the mode in which it is proposed to execute it, expressed in the words in which it is proposed to stand: to which samples may be added, general indications, on such occasions on which the nature of the case admits not of the taking any determination respecting the individual words.

2. Let intimation be at the same time given, that, in proportion to the aptitude of the work according to the estimate formed of it by public opinion, evidence will be regarded as having been given, of appropriate aptitude on the part of the workman, with relation to many of the most important public offices, to which pecuniary emolument stands *already* attached.

3. In such sketch, and sample or samples, should be comprehended as well the *civil* as the *penal* code: so intimate being the connexion between those two parts, that without a comprehensive and conjunct view of both, no clear, correct, complete, consistent, and well-ordered mode of execution, could be given to either.

4. In the samples and in the general sketch, it may perhaps be found necessary that the constitutional code be omitted: for, so universal and tenacious and craving is the appetite for power, that the idea of any considerable change in this part of the field of legislation affords little promise of being found endurable unless when imposed by force or intimidation.

5. In a representative democracy, there need be no difficulty. In the advertisement for this purpose, the legislative body, however, might probably, without objection, if it saw any use in so doing, lay down as a fundamental and indispensable principle, that, immediately or unimmediately, all functionaries shall be placed, and at short intervals displaceable, by the greatest number of the adult population, or of the male part of the adult population: or rather might give intimation, that for any departure from this principle, some special and convincing train of reasons would be expected to be assigned.

6. For the giving in of these samples, some determinate day, it should seem, would unavoidably be to be fixed. That day arrived, it will then be to be put to the vote which sample shall be preferred ; or whether, for want of any satisfactory sample, the time shall be enlarged.

7. Suppose a sample pitched upon. A further day will then be to be assigned, on or before which, a proposed complete code *in terminis*, embracing these two branches, with such blanks only as the nature of the case necessitates, shall be given in.

8. Though, if samples more than one have been sent in, adoption, if given to any, must be given to some one of them — it is not necessary that any peremptory exclusion should be put upon such complete draughts as any other of the competitors may be disposed to present. This (it may be said) is the sample most approved of. But all other persons are still at liberty to propose, each of them, his draught. It will, on that occasion, then be for each of them to consider — whether a completed draught, in conformity to the pattern most approved of, will not afford him the most promising chance.

9. On this plan, the remuneration — remuneration suited as above to the nature of the case, and of the sort of service rendered — need not, and naturally would not, be confined to the competitor by whose samples, nor in conclusion to the competitor by whose completed draught, the largest share of approbation has been obtained.

10. By the preference thus given in the main to this or that sample, or to this or that draught, the legislative body would not be precluded from giving indication of this or that portion of this or that other draught, as being regarded fit to be employed in the draught most approved.

11. The invitation to send in original samples, and afterwards completed draughts, will, of course, be accompanied or followed by a correspondent invitation to send in *observations* on, and proposed *amendments* to, all samples and completed draughts, to which any such acceptance, total or partial, shall have been given as above.

12. Be the number of these patterns ever so considerable, the expense of printing and publishing should be defrayed by government. Were it not for this, the expense might be a bar to the work of the least affluent competitors: and thereby to those, in whom, as such, the habit of intellectual labour, and thence the promise of intellectual, and even of appropriate moral aptitude, is fairest.

13. The produce of the sale might either be applied in alleviation of the expense, or be given to the respective authors. The expense on this score neither promises nor threatens to be very considerable. Be it what it may, so long as, in the whole of the official establishment, so much as a single sinecure, or useless, or needless, or overpaid office is to be found, to this expense no objection can with any consistency be made.

If, in consequence of this plan, any addition were to be made to the number of salaried offices it found in existence, it would be that of a functionary, with some such title as that of *Conservator of the laws.* Upon the following ground, stands the demand for an office of this nature. Regular and symmetrical would naturally be — would necessarily be, if well executed — the structure of a code, having for its accompaniment a *rationale* as above. By subsequent additions and alterations — without a degree of skill and care too great to be constantly reckoned upon, on every occasion, and from all legislative hands promiscuously taken — the symmetry would be liable to be injured, and confusion introduced: to obviate this inconvenience, in so far as it can be obviated without prejudice to the uncontrouled exercise of the legislative power, would be the office of this functionary. Before the sanctionment of each law — or when the pressure of the time was regarded as not admitting of the delay, as soon afterwards as might be — to him it would belong to propose for the *substance* of the new law, a *form* adapted to the structure of the code. Thereupon, if the form so proposed were adopted by the legislature for the time being, so much the better: if not, it would remain as the subject-matter of a virtual and tacit appeal to succeeding legislatures.

14. Supposing the office here in question established, the author of the draught most approved of seems to be the person, to whom, if expected to be found willing to accept of it, the offer of it would naturally be made.

15. But the choice should be left unfettered. Be the literary composition ever so well penned, fitness for the office would not, on the part of the author, be a necessary consequence. Various are the points of appropriate aptitude, in which, relation had to the business of this office, he might still be deficient. Witness, aptitude in respect of health, assiduity, uncorruptness, firmness, gentleness, quickness in execution, &c.

16. After the completion of the code, it might not improbably be a considerable time, before the need of the offer thus described would manifest itself.

Reasons for the above described open mode.

They are constituted by the advantages, which, with reference to the greatest happiness of the greatest number, would be the result of it.

1.—*Reason* 1. The chances, in favour of the aptest possible draught, rendered the greatest possible. The more draughts sent in, the more will there be for those to choose out of, to whom it belongs to choose.

2.—*Reason* 2. The greater the number of draughts sent in, the greater the number of those, out of which, portions might, upon occasion, be selected for the amendment of that one, whichsoever it were, that shall have been chosen to serve as the principal basis of the completed work.

3.—*Reason* 3. Advantages derivable from the *school* that would thus be established, for functionaries in the legislative departments.

4.—*Reason* 4. Advantages from the school thus established, as applied to the case of functionaries in the judiciary and administrative departments.

Masters in these schools, the authors of the proposed codes: scholars, the readers of these same codes. Note, that in this branch of art and science, as in every other, the pleasantest and most effectual mode of *learning* is by *teaching;* — by teaching, or at least *endeavouring* to teach.

By the reading of books and articles in periodical works, on subjects belonging to this or that small spot in the field of legislation — by reading in this way, with or without the hearing of speeches, are statesmen formed at present. But from such scattered and casually visited springs, what is the greatest quantity of information capable of being derived, in comparison of all those several floods, by each of which the whole field of legislation and government will be covered?

True it is, that, in regard to offices belonging to the judicial department, the same

observation applies to these as that which has just been applied to the proposed future contingent office of *conservator of the laws.* By no degree of aptitude, be it ever so high, on the part of any such legislative draught, can any absolutely conclusive evidence be given, of aptitude on the part of the author, with relation to any of these certainly and constantly indispensable offices. Witness, in addition to the elements of aptitude instanced in that case, fluency in speech.

So likewise in regard to offices belonging to the several branches of the administrative department. Further exemplification will not here be necessary.

Still, as far as it goes, still even with reference to every such office, what can scarcely fail to have a place is — that by the authorship of an intellectual work, so matchless in difficulty as well as importance — in the extent of knowledge as well as correctness of judgment necessary, — evidence of appropriate aptitude — evidence in a pre-eminent degree probative — will have been exhibited — exhibited by a no inconsiderable proportion of the whole number of competitors.

Objections answered.

1. — *Objection* 1. Fruitless the invitation: none will be found to accept it.

Answer. The objection has been anticipated. What! — is money of no value? — is power of no value? The highest of all bloodless glories, is that too of no value? Vain would it be to say — despair of success will drive men from so arduous a work. Not it indeed. In each man's eyes, success will depend — not on absolute, but on comparative aptitude.

But, suppose no such work sent in, where is the evil? Absolutely none. On the contrary, there is this positive good: evidence given to the subject many — evidence, and that of the most conclusive kind — of sincerity on the part of their rulers, in respect of the sacrifice thus made of so large a portion of power to the universal interest.

2. — *Objection* 2. The press would be inundated and overloaded; public money would be wasted in the publication of so many voluminous compositions; public time wasted in the consideration of them.

Answer. Strange indeed it would be, if the objection were not completely anticipated by the two great political *schools* — by the school for legislative functionaries, and the school for executive functionaries, as above. For any the most trifling branch of art and science, in what instance was any the most inconsiderable school ever established by the government of a country at so small an expense

3. — *Objection* 3. An innovation this: unprecedented this open mode of legislation.

Answer. True, in point of fact: but what is the application of it in point of argument? Unprecedented it must be confessed is this open mode, on the part of men whose station is in that place from whence it is proposed that the invitation should come. Unprecedented: but why? Only because, in breasts so stationed, pre-eminent regard for the greatest happiness of the greatest number, in preference to all particular and thence sinister interests, is unprecedented.

4. — *Objection* 4. By the adoption of this open mode, the two situations of representatives and constituents would be *confounded:* the power that had been transferred, would thus be given back.

Answer. What if it were — what if, for the purpose of passing condemnation, a word to which a dyslogistic sense stands associated, such as the word *confusion*, could, without impropriety, be applied? Suppose not only these but all other situations confounded, where would be the evil, if, by such confusion, the greatest happiness of the greatest number would be increased?

Not that there is any such thing as confusion in the case. True it is — that, by every exercise given to the legislative function, a *power* is exercised: for, of this function, the exercise is confined to a comparatively small number, all others being excluded from it: to that function, therefore, power is effectually attached. But, by the very supposition, from the exercise of the function here proposed to be laid open to every man, no man is excluded. Here, therefore, no power has place. True it is, what is proposed is — that a *service* be performed: a service which, if well performed, will be the most beneficial, as well as the most difficult, of all services: but still, by the performance of it, though it were by ever so great a multitude, not an atom of power would be exercised.

Reasons for not giving to members of the legislative body the exclusive faculty of furnishing original draughts: — of furnishing them in this extraordinary case, as has been hitherto everywhere the practice in all ordinary cases.

1. — *Reason* 1. They have no time applicable to it.

The composition of a body of law, — which is to be at the same time all-comprehensive, and on every point, by means of a perpetually interwoven rationale, justified and explained, — presents of itself an irresistible demand for the whole quantity of applicable time, at the disposal of whatsoever individual may be engaged in it: if so, then, in the case of every individual possessing any share in the aggregate of legislative power, if any part of his time be employed upon this work, the consequence is — that either the ordinary func-

tion called, or liable to be called, continually into exercise by the exigencies of the day, or else this extraordinary function, or both the one and the other, will of necessity be neglected.

In the practical result of this reason, is comprised (it may be observed) an exclusion put upon the members of the legislative body, as to the function of drawing up any such draught. It applies not however to the *persons* — this exclusion: — it applies only to the *time:* and as to time, it applies not to any portion other than that which, by their engagement, stands appropriated to the ordinary duties of such their situation. It applies not to the exclusion of any draught already prepared by any member, antecedently to the day on which the all-comprehensive invitation shall have been resolved upon: it applies not to any portion of time subsequent to that, during which his exercise of those same ordinary functions is continued: it is therefore no bar to his entering, immediately after such invitation, upon the task of penning such a draught, provided that on that occasion he vacates his seat.

Objection to the above temporary exclusion. Presence of the author necessary for explanation and justification. What (it may be asked) must be the condition of any such original draught, if the author, of whose views it is the expression, is not, at the time of its being on the carpet, enabled by his presence to supply such explanations and justifications as may be requisite for the support of it?

Answer 1. To the case of an original draught of the ordinary kind — of a draught containing nothing but an assemblage of expressions of will, without anything whatever in the shape of *reason* for the justification or explanation of it, — true it is, this objection would apply with no inconsiderable force. But, in the case of an original draught of the sort here in question, an instrument of explanation and justification is by the supposition always present: and this too in a form beyond comparison more apt than any that could be given to a set of impromptuary and orally delivered observations: more apt, namely, in *clearness*, *correctness*, *completeness*, *conciseness*, *compactness*, *methodicalness*, *consistency* (meaning, exemption from inconsistency): naturally, not to say necessarily, more apt, and that to an indefinite degree.

2. The original draught, whatever it be, being given in, the having composed it is no bar to the author's being a member of the assembly in which it is the subject of discussion.

In truth, supposing him not to be a member, he might throughout the discussion be present, with the faculty of giving his assistance to both those purposes. Nothing more natural, because nothing more obviously useful, and as it should seem unexceptionable. *His* not having the *power* of a member, is no reason why the *assembly*, and through the assembly the *nation*, should not have the faculty of receiving from him this *service*.

2. — *Reason* 2. By the competition thus proposed, a *bridle* will be applied to the power of the constituted authorities: a *bridle*, and *that* an unexceptionable and indispensable one.

The need of this tutelary instrument has for its cause the *influence of sinister interest:* that particular interest, by which, in case of competition, and to the extent of the competition, every individual is prompted to make sacrifice of the happiness of all besides to his own individual happiness: in every situation every individual prompted, and, in every political situation, in proportion to the power and influence attached to that situation, enabled, to make this sacrifice: say the *sinister sacrifice.*

Behold now what this bridle is, and how it is that, by the unlimited number of original draughts let in by the proposed open mode, it is applied. By the supposition, each draught comes provided with its *rationale;* and true it is that, by that same rationale, as above mentioned, a bridle is applied, nor that an inefficient one: applied, namely to the mouth of the author of that same draught. Small, however, will be the utmost tutelary force of that one bridle, compared with that which may be applied by the aggregate of all the several draughts, with their respective rationales, to which, in a number altogether indefinite, it is the object of the here-proposed arrangement to give birth. The bridle which, in this shape, each man makes for his own mouth, will of course be as light and soft as he thinks he can venture to make it. Let any one therefore judge, how inadequate the force of this one check, and that applied by so partial a hand, cannot but be, when compared with the united force of all those instruments of salutary controul which, in an indefinite number, he sees about to be applied: applied by so many different hands, preserved, all of them, by the very nature of the case, from all partiality in his favour: instruments, which though not made, any of them, for his mouth in particular, will not be the less effective.

Of this composite bridle, the tutelary force will apply itself successively to both situations: in the first instance, to that of the framers of the several original draughts, on which the several members of the legislature are to sit as judges, and when it has produced its effect in that quarter, then to the situation of members: to the legislators themselves, when occupied respectively in the formation of their several judgments, and in the consideration of the line of conduct to be pursued

by them in consequence. In the case of each individual draughtsman, the controul has for its cause, the anticipated view of the body of information, that may come to have been furnished by the several rationalized codes sent in by his competitors: in the case of the legislator, it is the actual view of them when sent in. When the collection of them has been completed, each member of the legislature, according to the measure of his zeal and industry, will of course compare them with one another in his own mind, and out of such of them as appear to him worthy his attention, he will form for himself the substance of a new draught, composed of whatsoever arrangements have obtained his preference. In this new draught, in what way soever the component parts of it may have been put together,— whether in the letter-press or only in his own mind, — the *rationale* will be the standard of comparison, by which the text of each arrangement, in each several draught, will be judged of by him: and, of the correspondent portions of text, will be composed the aggregate of the several arrangements, to which his duty will be calling upon him for his support. Moreover in this same aggregate, each private individual, whose attention is applied to the subject, will see the ground of whatever judgment he puts himself in a way to pronounce — whether in the general character of member of the tribunal of public opinion, or in the particular character of constituent, on tne conduct of his representative, on the occasion of the judgment passed by him on the subject of the work, in the aptitude of which the whole nation has so deep an interest.

Reader, be not alarmed by the idea of the possible immensity of the supposed aggregate. The state of things, which in an eminent degree seems probable, is — that, be the number of the draughts what it may, of some one of them — the most apt upon the whole — the consistency will be such, that if it be employed in any part, it will be employed, almost to the exclusion of all others; and that the only use made of these others, will be the deriving from this and that one of them, an amendment for this or that particular imperfection, that may have been observed in the fundamental work.

A pattern of this sort being in every man's view — a literary composition, of which, in every part, the component words stand determined — conceive now the advantage, with which, in his capacity of censor, every citizen will be enabled to act, while calling to account this or that member of the legislative body, in respect of the code, or any part of the code, to which his concurrence has been given: — "Behold this and this *unfit* arrangement in the draught that has your support — to arrangements, the unfitness of which stands demonstrated in the portion you see of the rationale belonging to this other draught. Behold the draught, in which are this and this *fit* arrangement, which, in your draught, though in the corresponding parts of its rationale their fitness stands so conclusively demonstrated, are not to be found! With the *so much better* lying before you, wherefore is it that you have given preference to the worse? For such preference, what justification, what apology, can you produce?" Of this nature are the questions, by the fear of which the bridle is applied.

Compared with a judgment formed with such a pattern for its ground, — how vague and ungrounded must be the best grounded judgment, which, in relation to the subject matter in question, can be formed! — formed, even by the best constructed mind in the present state of things! Neither for approbation, nor thence for disapprobation, is anything, approaching, though at ever so wide a distance, to a determinate ground, to be found anywhere, by any man: nothing better than the ever indeterminate, and ever changing, as well as ever inadequate, stock of such crude, incorrect, incomplete, mutually and perpetually discordant conceptions, as may be found extractible from the existing stock of literary matter, belonging to the several departments of legislation and government: with or without the addition of such information and advice, as it may happen to him to have obtained from this or that other man, whose conceptions and judgment have been derived from the same muddy source: both judgments all the while exposed, and without warning, to the delusive influence of all those *fallacies*, and other instruments of delusion, with which the whole field of government is, in every portion of it, so abundantly infested.

Deteriorated rather than improved, is this fluctuating standard, this ever changing pattern, by such flashes of eloquence, addressed so much more frequently to the passions than to the judgment — those momentary lights, of which orally delivered speeches are in so large a proportion almost unavoidably composed. The *greatest-happiness* principle, with its mild and steady radiance, will be an extinguisher to all such false lights.

Antecedently to the formation of the sort of pattern here described, — in forming a judgment in relation to what on this or that part of the field the law *ought to be*, the condition men's minds are in, is analogous to that in which, on so large a portion of that field, they are, in relation to what the law *is*: namely, on that portion of it which is under the dominion of that spurious and fictitious substitute to really-existing law — that fictitious offspring of each man's imagination — so improperly though generally designated by the name of *unwritten* or *common law*.

Not only to any representative of the people may questions, with this ground to them, be

addressed, but to any other sharer in legislative power, whose situation is accessible: not only to the situation of representative of the people does the corresponding bridle apply, but to that of any servant of the monarch in the situation of minister: of minister:—for, as to the fleshly idol of which the minister is the priest, deafness as well as dumbness are of the number of his attributes.

Not only by a constituent, to a candidate for the situation of representative, on the occasion of an election,—but by any individual whatever, and on every occasion, so his situation be but an accessible one, may the sort of questions above exemplified, searching as they are, be addressed.

If appropriate moral aptitude in perfection, seconded by appropriate intellectual and active aptitude in correspondent perfection—if consummate wisdom and consummate talent under the guidance of consummate virtue, be not among the never-failing accompaniments of power—if, in a word, for the security of the subject many, a bridle in any shape to the power of the ruling few, be needful,—a softer and less galling bridle than the one here proposed—a softer and less galling one, whatsoever may be its efficiency—cannot easily be imagined. Whatsoever be the constitution it finds established, not any the slightest change would it produce or so much as hint at.

Even under a pure monarchy, if in such a government a bridle in any shape, applied to the mouth of the earthly representative of the Divinity, in any part of the field of his dominion, could be endurable,—a bridle in this shape might, not impossibly, be endured. In the penal and the civil portion of the field, it would be so, if in any. As to the constitutional portion, on which, under this form of government, nothing reasonable can be said in support of anything that has place,—on which, darkness, silence, and motionless prostration on the one part are the indispensable means of security on the other,—on this domain, the touch of a feather in the shape of a bridle would be intolerable: the more efficiently contributory an arrangement were demonstrated to be to the greatest happiness of the greatest number, the more intolerable would the sight of it be to the supremely ruling one, with his sub-ruling few.

Discarding now all these flattering suppositions,—take in hand the sad case, which as yet has at all times and everywhere been in this respect the only real one. Proposed code, none visible, but the one, whatever it be, which has had the seat of power—of irresistible power—for its birthplace. Out from it comes the draught,—and in every part of the field, be its inaptitude ever so portentous, this it is that must have the stamp of authority upon it—this or none. All better ones have been kept out of existence.

Would any man wish to see in how high a degree inimical to the greatest happiness of the greatest number, a proposed code is capable of manifesting itself?—of manifesting itself, after all the lights, which, down to the present time, have been spread over the field of its dominion?—let him turn to the work, with which, in the character of a penal code, Spain, while this page is penning, is still menaced.

Section 6.

The greatest happiness of the greatest number requires—that, for the drawing of any such draught, no reward at the public expense be given. *At additional expense, reward none.*

Of the above-described unexpensive plan, the advantages cannot be more clearly brought to view, than by bringing to view the several detrimental effects, produced or liable to be produced, by the expensive one.

In this as in other instances, where service is proposed to be called for, in behalf of the public, at the hands of individuals,—a natural enough conception is—that, by factitious reward, allotted to the purpose at the public expense, a proportionable degree of aptitude may probably be obtained for the work: a degree greater than could otherwise be obtained for it: insomuch that the higher the reward, the greater is the probability of the highest possible degree of aptitude.

On an attentive examination, so far will this be from being found to be the case, that by, and even in the direct proportion of the magnitude of such factitious reward, will the probability of the highest possible degree of aptitude be seen to be diminished.

From any such factitious reward, the following are in detail the evil effects that will be seen to be the result: effects either as detrimental to the degree of aptitude in relation to the work in question, or as productive of evil in this or that other shape:—

1.—*Evil* 1. The effect of the reward is—to give birth to so much expense: and it will immediately be seen, that this expense is not merely useless, but worse than useless. Say, *Expense wasted.*

2.—*Evil* 2. The tendency of the reward is to lessen, instead of increasing, the number of apt competitors: thence the probability of the highest degree of aptitude is lessened instead of increased. Say, *Number of competitors lessened.*

3.—*Evil* 3. The tendency of the reward is—to place the work in hands less apt, instead of more apt, than those in which it otherwise would have been placed. Say, *Less, not more apt hands,—the result.*

4.—*Evil* 4. The tendency of the reward is—to produce precipitate execution, thence

comparative inaptitude, or else extra-delay, up to ultimate non-performance, according to the mode of payment in respect of time. Say, *Precipitation, or else delay up to non-performance, the result.*

5. — *Evil* 5. The effect of the reward is — to deprive the public of the benefit of all such works as, how useful soever, would not in point of extent be adequate to the desired purpose. Say, *Useful, though not adequately extensive, performances, excluded.*

6. — *Evil* 6. The effect of the *factitious* reward is — to lessen the number of the instances, in which, by the *natural* reward alone, proofs of aptitude for political service in various shapes would be brought to view. Say, *Legislation school narrowed.*

Now for a few explanations: —

Evil 1. *Expense wasted.* — True it is — that if, by increase of remuneration, any reasonable promise of a corresponding increase of aptitude were afforded, — the highest reward, that could with any chance of success be proposed, could not be too great. But, whether any such promise could be afforded may now be seen.

Evil 2. *Number of competitors lessened.* — It will be lessened by the non-appearance of all such otherwise apt competitors as by the apprehension of the want of *interest* (in the English phrase) of the want of *protection* (in the French phrase) — in a word, of the want of *appropriate favour* in the eyes of those on whom the choice depends, will be deterred from entering the list.

By the introduction of factitious reward in the shape in question, the case would be rendered a case of *patronage:* of patronage, in the hands of the person or persons, on whom the choice of the individual or individuals to whom the service, with its reward, shall be allotted, depends. As to patrons, and their number, — they may be *many, few,* or *one:* the whole legislative assembly, for example, a legislative committee of the assembly, a council of ministers, the president of the legislation committee, or the minister of justice. With respect to the result in question, no one of these diversifications will make any considerable difference. In the eyes of every person in the situation of *patron* — in the eyes of every person in the situation of *protegé*, — the reward will, in the ordinary course of things, be at the least the principal object; the service, if an object at all, at the utmost a subordinate one. But, the greater the reward, the greater in all these several eyes will be the ratio of its importance to that of the service: the greater the reward, the less therefore will be the chance the service has of being in the highest degree well performed.

Evil 3. *Less, not more apt, hands,* — *the result* — Unless any adequate reason can be shown to the contrary, the chance in favour of the best possible workmanship will of course be diminished by every diminution in the number of the candidates: and, the number of the candidates being (suppose) the same, the chance in favour of the best possible workmanship will again be diminished, by every diminution that can be shown to be effected, in the aggregate aptitude of all the candidates. But, for a work of the sort in question, the probability in favour of aptitude on the part of the workmen is rather diminished than increased, by that felicity of connexion, of which, as above, *interest* in the English sense, *protection* in the French sense, is the natural result. For superior aptitude in this line, the most intense and persevering *habit* of scrutiny and reflection, with a correspondent and adequate *stock* of information for the subject-matter of it, is not too much: and such *habit* is more likely to be persevered in, such *stock* more likely to be laid in, by one who, as the phrase is, has mixed little with the *world* — in the *high world* — in the *aristocratical world* in all its several orbs, — than by one who has mixed much. A person not known to the patron, whoever he be, cannot be an object of his choice: of those who are known to him, he who in his eyes is the most agreeable object, stands a better chance of experiencing his support, than he who, even in those same eyes, is in the highest degree possessed of appropriate aptitude, with relation to any such dry work.

True it is — that, to the apt composition of a work, by which the condition of all classes from the lowest to the highest is undertaken to be disposed of, while for its success it depends upon the state of the human mind in all those several classes, — opportunities for the observation of it should not, in the instance of any of them, have been altogether wanting. But, for this purpose, a slight intercourse will, in each instance, be sufficient: slight is the intercourse that will be sufficient to convince an attentive observer, that, where literary culture, intellectual and moral, has not been altogether wanting or deplorably misapplied, the degree of regard for the greatest happiness of the greatest number is rather in the inverse than in the direct ratio of a man's elevation in the conjunct scales of opulence, power, and factitious dignity. The less the need a man feels of the good will of others, the less solicitous will be his endeavours to possess it, and, that he may possess it, to deserve it.

Evil 4. *Precipitation or else delay, up to non-performance, a natural result.* — Of precipitation, the effect as applied to the case in question is, as the term in a manner supposes, on the part of the work, inferiority of aptitude. In the instance of the most apt workman, the time allotted for the work not being

sufficient for the purpose of giving to it so high a degree of aptitude as it would otherwise have possessed, aptitude in the work will, in a correspondent degree, be diminished.

If unnecessary delay has place, and in proportion as it has place — *i. e.* if the time allotted for the completion of the work, and thence for the receipt of the reward, is greater than what is necessary for giving to it its best chance for possessing the highest degree of aptitude — the difference, between the length of time appointed and the length of time that would have been sufficient, gives the length of time, during which the *advantages* resulting from the work fail of having place: which is as much as to say — the *evils*, that have place in the as yet existing state of things, continue unremoved.

If, in his view of the matter, the interest of the workman requires, that the work be performed with *precipitation*, with precipitation it will of course be performed: and from precipitation comes, as above, proportionable inaptitude.

If, in his view of the matter, the interest of the workman requires, that the task be performed with *delay*, with delay it will of course be performed: and if, in his view of the matter, his interest requires that it be not ever completed by him at any time, it will not ever be completed by him at any time.

Of these several cases, no one is altogether an imaginary one: of the one last mentioned, an exemplification will presently be brought to view: and by this one, exemplification in the case of the two others will be rendered unnecessary.

Had factitious reward in this case been regarded as necessary, and accordingly recommended, — a task that might here have been called for, is the showing by what course both these rocks might be avoided: and, for this purpose, the several possible modes of connexion, between reward and service, with reference to time, might have required to be brought to view in full detail. As it is, nothing more belongs to the purpose than what is necessary to the giving of a tolerably distinct conception, of the advantage in this respect possessed by the gratuitous, as compared with the stipendiary mode.

For exemplification, here follow a few of the most obvious modes, with the attendant evils: —

Mode 1. Payment none, till the service has been completed; and a time fixed, within which, on pain of non-payment, it must have been completed: *Evil*, actual or probable, precipitation; thence, on the part of the work, correspondent inferiority in the scale of aptitude.

Mode 2. Payment none till the service has been completed; but no such time for it fixed: *Evil*, actual or probable, precipitation, with inferiority as above.

Mode 3. Payment, the whole at once, made or (what comes to the same thing) secured, before any portion of the service has been rendered: *Evil*, actual or probable, delay; ending or not ending in ultimate non-performance, partial or total.

Mode 4. Payment going on while the service is rendering, or supposed to be rendering: *Evil*, delay, ending or not ending in non-performance, as above.

Mode 5. Payment, part of it made in a mass, beforehand, as above; other part in instalments, as last mentioned: as in the case of a pension, for a time fixed or not fixed, limited or not limited: *Evil*, delay, ending or not ending in non-performance, as above.

For illustration of all these several imaginary modifications, a single actually exemplified one may, it is believed, suffice.

Before me lies the unpublished, and even undenominated, yet assuredly authentic, plan of a still-existing official establishment for the production of an all-comprehensive code. State, Russia; year, 1804: aggregate annual amount of salaries, roubles of that time 100,000: pounds sterling, say 10,000: this, exclusive of the salaries of two *master men*, by one of whom auspices were furnished, by the other, labour, or the appearance of it: crowning salaries, over which, probably in consideration of their enormity and disproportionateness, a veil of secresy is spread. Of each salary, the whole, secured to each workman or alleged workman, so long as the work remained unfinished: the work finished, to each possessor an indeterminate chance for the continuance of a part, possibly even the whole of it. (See in page 33, article 16.) Such the adjustment of means to ends. Date, 4th of February 1804. In August 1821, no such code as yet, either in whole or in part: interval, 17½ years: exclusive of the unknown additions, money expended, unless engagements have been violated, £170,000.

Suppose all such factitious reward out of the question, none employed but in the natural and unexpensive shape, proposed in the last preceding section, danger is, in all the several above-mentioned shapes, either excluded, or at least lessened. A time (suppose) is fixed: nor can such fixation be easily avoided. Each competitor, if, to his own satisfaction, he is able, will complete his work by the time. But, if not in this degree able, he will not on that account give up the pursuit: he will either send in his work, although it be in what to him appears an incomplete or otherwise imperfected state, and thus take his chance for acceptance in the first instance; or, leaving it to others to send in their works by the time, send in his own afterwards, in the hope of its presenting matter capable of being employed in the way of amendment to whatever draught shall have received the stamp of authority. In either case, appropri-

ate aptitude, in whatsoever shape and degree possessed by him, will have been displayed: and, with or without the honour of being aggregated to the body of the law, the produce of his labour will serve as evidence of his aptitude for official situation, in this or that other and more tangibly profitable shape.

Evil 5. Useful, though not adequately extensive, performance excluded.—The evil that presents itself in this shape has just been brought to view.

Evil 6. Legislation school narrowed. — In whatsoever shape and degree appropriate aptitude, with reference to the sort of work in question, may have been displayed, the demand for fresh exertions in the same line can never be altogether made to cease. Not even with reference to the time, be it what it may, at which it has received the stamp of authority, will any draught, either in universal opinion or in its own nature, possess the attribute of absolute perfection: and, even supposing it possessed of that super-human attribute with reference to that moment of time, fresh times, with correspondent states of things, will continually be presenting more or less demand for change. Such will be the case, perhaps, as long as, in any community whatsoever, the species continues in existence. But at the present moment, at how vast a distance, in the best organized community, is the state of things from that ideal point!

In respect of *form*, including *method* and *expression*, absolute exemption from all need of change is not by any means so completely ideal as in respect of *substance*. In respect of *method*, there will be seen to exist in this case, in the line of aptitude, a point at which the problem of the highest degree of that quality will have been solved: solved, in such sort, that whatever shall from time to time come to be the changes made in respect of substance, no further advantage remains to be obtained from change in respect of *method*. Even in regard to *expression* — expression given to the substance, such as it is at the time in question — this point may not be absolutely unattainable, though the time of its attainment will not arrive so speedily in this case as in the other. But, as substance changes, expression undergoes of necessity a correspondent change. Meantime, in regard to such men as from time to time shall have succeeded in obtaining this or that change in respect of substance, the nature of the case admits not of any sufficient assurance that they will all of them be at all times willing, and at the same time able, to give to the new matter a mode of *expression*, or even a method, corresponding in every point with that which it found in existence.

Here, then, comes the demand for the sort of scientific skill alluded to in the last section: and to a supply of this skill, the legislation school herein described would give commencement; and, after commencement, continuance: but, to the establishment of this legislation school, the perfectly open competition above described has been shown to be necessary.

Supposing these objections to the *remuneration plan* well-grounded and conclusive, in no state of things can they be useless: in no state of things can a plausible demand for inducement in this shape be altogether wanting. For example, take the case of a legislation committee. By no such body (it may indeed be said,) nor by any member of it, can remuneration in any shape be expected or received: to no such portion of itself could the legislative body at large propose to make any such allowance. True. But if *a rationale* is to enter into the composition of the work, it has been seen how plainly impossible it is that this extraordinary business should, by any man or men in that situation, be carrying on at the same time with their part in the ordinary business: always remembered that the time within which it must be completed by them stands limited to two years: that being the utmost time anywhere allotted for the continuance of their authority. This being supposed, — then, if the work is to be executed at all, comes the necessity of turning it over to other hands. Thereupon, in a manner altogether natural, comes in the proposal of *a remuneration*. Custom and shame would have concurred in forbidding the offering any such boon to their own hands; but, this being a public service, custom would seem to require, and shame would not forbid, their offering it to other hands. Hereupon comes the necessary question, as above — in what *patronizing* hands shall the choice of the *operative* hands be lodged? and, let the answer take what shape it may, then come the evil consequences that have been brought to view. *Patronizing hands* — say, those of the legislation committee — say, those of the legislative body at large — say, those of the chief of the state: in a monarchy, the monarch's; in a representative commonwealth, the president's: *time of payment*, in the whole or in part — say, antecedent to the commencement of the service — say, concomitant with the service — say, posterior to the conclusion of the service: under no one of all these modifications will the result stand clear of the *evils* above specified.

Section 7.

The greatest happiness of the greatest number requires — that every draught, so given in, be, from beginning to end, if possible, the work of a single hand. *Hands not more than one.*

On a nearer inspection, this position will be found composed of two distinguishable ones:

two, which, standing on different grounds, will, at the outset, require to be distinguished. One is — that *each part*, considered by itself, should be the work of not more than one hand: the other is — that, whatsoever be the number of the parts, they should be, *all* of them, if possible, the work of that *same* single hand.

In regard to each part taken by itself, — the ground on which the position stands is — that of *moral* aptitude: two, or any greater number of workmen, will not be so effectually disposed to take the greatest happiness of the greatest number for the object of the work, as any single one of them would: comparative want of appropriate *probity* is the cause of the inferiority in this case. In regard to the several parts taken together, — the ground on which the position stands is — that of *intellectul* and *active* aptitude: two, or any greater number of workmen, all equal in good intention and skill as above, but taking each one of them a different part of the work, will not render it so well adapted to that same end as any one of them would, supposing him to execute the whole. Want of *consistency* in the *workmanship*, is the cause of the inferiority in this case.

I. In the case of each part, taken by itself, let us now see in what manner appropriate moral aptitude on the part of the workman, and thence aptitude on the part of the work, as far as depends upon such aptitude on the part of the workman, are affected by the *number* of the hands.

Upon the efficiency of the *inducements*, whatever they are, by which the workman is prompted to render his work as highly contributory as possible to the greatest happiness of the greatest number, in despite of all *temptation* offered by sinister interest in all its several shapes, — will depend, so far as depends upon *moral* aptitude on his part, the degree in which the work will be contributory to that same all-comprehensive and only justifiable end. But, it is by the power of the *popular or moral sanction*, as applied by the *tribunal of public opinion*, that these inducements, whatever they may amount to, have to be applied. In the case of this, as of every other sanction, it is of the anticipation, either of eventual evil having the effect of punishment, or of eventual good having the effect of reward, or of both together, that the inducement will consist.*

Let us first see the effect of *multiplicity* in this case, in diminishing the power of the tribunal of public opinion, in so far as depends upon the influence of evil having the effect of *punishment*; diminishing, in a word, the degree and the efficiency of *responsibility*.

1. The greater the number of the workmen concerned in the work, the greater is the difficulty of knowing, in case of bad workmanship, who are to blame, and which is most to blame.

Say even that the number is no greater than *two:* still, in regard to blame, everything is in the dark: in regard to each distinguishable part, by which of them it was brought forward: from which of them it received the most strenuous support: in the giving support to it, what were the arguments — what the other means, if any, that were employed.

2. The greater the number, on whom, on this as on any other occasion, disapprobation falls, the lighter it falls and sits on each. It keeps floating as it were in the air, not knowing where to settle; and no sooner does it attempt to alight on any one, than, like a shuttlecock, it is driven back again, or driven on against another.

3. The greater the number of the workmen, the more ample and efficient is the aggregate of the support which the unapt work will be apt to receive everywhere, in the legislative body, and even in the nation at large, notwithstanding its inaptitude. For, the greater the number of the workmen, the

* In so far as *evil* having the effect of *punishment* is the inducement, *responsibility*, *i. e.* exposure to eventual punishment, is a word which, in this case, is in possession of being employed: it is by his sense of *responsibility*, that is, by his perception of this exposure, that, be the work what it may, the workman is, in this case, induced to endeavour to make good work, to render his work in this or that way contributory, to abstain from rendering it in this or that way detrimental, to the maximum of happiness.

In so far as *good* having the effect of *reward* is the inducement, no single word answering to the word *responsibility*, as used in the other case, has been found: *probability of receiving eventual good, having the effect of reward*, is a phrase by which the conception may be conveyed. At every turn, he whose endeavour it is to avoid conveying any idea that shall fail in clearness, correctness, or comprehensiveness, finds his hand arrested by the imperfection and intractability of language.

In general acceptation, *responsibility* has reference as well to *legal tribunals* as to the *tribunal of public opinion:* as well to the power of the *legal sanction* as to the power of the *popular or moral sanction:* and, as the force of the legal sanction is in general so much more irresistible than that of the moral, it is this stronger species of inducement that in general is more conspicuously, if not exclusively, brought to view by it. But, in the present instance, *responsibility*, as towards the legal tribunals with their legal sanctions, has no application. Where, on the part of a public functionary, the act in question is no other than that of giving introduction or support, as here, to a legislative draught — what may indeed happen to him, is — to find himself rendered thereby an object of aversion or contempt: but what can scarcely happen to him, is — to find himself, on any such account, subjected to punishment at the hands of the law.

more extensive will be the aggregate of their several connexions; and, the more extensive as well as the more influential those connexions are, the more efficient will be the support which they will afford.

The reputation of the bad workmen will be supported by them and their connexions for the sake of them and their connexions: and for the sake of their reputation, the reputation of the bad work will be supported. For a protection to particular arrangements inimical to the interest of the greatest number, rules of judging inimical to that interest will be devised and circulated. Also, for the sake of ulterior bad arrangements, bad principles — the fruitful seed of such bad fruit. Everything that is most inimical to the greatest happiness of the greatest number, does it not find in one single word, *legitimacy*, one of its most efficient supports?

Of the tribunal of public opinion, there may be seen in every country two *sections*: the *democratical*, and the *aristocratical*. In each section, the judgments of the tribunal are of necessity determined by the interest of the judges: by what *are*, or if there be any difference, by what are *supposed* by them to be, their interests. In relation to every such work, and the conduct of the workman or workmen on the occasion of it,—the judgments of the *democratical* section of this same tribunal will be more or less favourable or unfavourable, according as that same work and that same conduct are regarded as being more or less contributory or detrimental to the greatest happiness of the greatest number: of the *aristocratical* section of that same tribunal, the judgments will, in relation to that same work and that same conduct, be more or less favourable or unfavourable, according as they are respectively regarded as being contributory or detrimental to the greatest happiness of the ruling and influential few, whatsoever may become of the happiness of the *subject many*—the altogether uninfluential or less influential *many*. To the aristocratical section of this same tribunal can scarce fail to belong, in the case of the sort of work here in question, whatsoever workmen are occupied in the composition of the work. The greater the number of these same workmen, the more efficient therefore is the support, which, in the legislative body, a draught drawn by such hands is likely to receive — to receive, in whatsoever degree it may have been rendered unapt with reference to the greatest happiness of the subject many, by attention paid to the particular and sinister interest of the ruling and influential few.*

Thus much as to the influence of a multiplicity of workmen, in diminishing the efficiency of the *punitory* power of the tribunal of public opinion, as operating towards the suppression of *bad* works. Now as to its influence in diminishing the efficiency of the *remuneratory* power of that same tribunal, as contributing by its general influence to the production of *good* works: —

1. In regard to the whole — the general complexion of it being by the supposition meritorious — in regard to each several arrangement contained in it, the greater the number of the workmen, the greater will be the difficulty, in distinguishing from those, if any, to which no share, those to which some share of the honour is due; and, among these, in distinguishing to whom the greatest share is due.

2. The greater the number of the workmen, the less the share which each one of them has in the aggregate mass of the honour bestowed upon the work. On him to whom it is indebted for the greater part or even the whole of the aptitude displayed by it, it may happen that no more honour shall be bestowed, than upon him to whom it is not indebted for any more than the smallest part, or than upon him to whom it is not indebted for any part.

Thus it is—that, against the censure due from the tribunal of opinion to an unapt work of the sort in question, undue support is given, by and in proportion to the *number* and *influence* of the functionaries regarded as being concerned in it: —support given to it, and the probability of its receiving the ultimate stamp of authority increased.

* Modes of support to a bad work. The following may serve as an exemplification of the devices wont to be employed, for the purpose of eluding or unduly mitigating the judgment of condemnation, due from the tribunal of public opinion, to the author or authors of a law or other authoritative literary composition, adverse to the greatest happiness of the greatest number:—

1. Weakening, by ungrounded praise expressed in vague generalities, such conception of the inaptitude of the work, as would be derived from particular examination of the several distinguishable parts in it.

2. Increasing the uncertainty, respecting the parts respectively taken by the several declared collaborators, in respect of such particulars of the work as are found incapable of being justified.

3. Devising and circulating false reports, of circumstances such as may be regarded as operating in justification or extenuation of misconduct in any shape, on the part of the workman, in relation to the work.

4. Circulating erroneous or exaggerated conceptions, of the general meritoriousness of the disposition and conduct of the several collaborators: to the end that, by the sort of presumptive or circumstantial general evidence thus afforded, of superior aptitude, on the part of the workman, and thence on the part of the work,—whatsoever particular and direct evidences of inaptitude are afforded by the texture of it, may be outweighed in the minds of readers.

5. Circulating, in like manner, false, or exaggerated or erroneous conceptions, to the prejudice of any such more apt works as come in *competition* with the one thus endeavoured to be supported.

From him whose share in the merit is greatest, more or less of the honour may thus be drawn away, by the others and their connexions. In its endeavour to fix upon the proper person, and in the proper proportion, — *honour*, from causes correspondent and opposite, will find as much difficulty in this case, as *dishonour* in the opposite case. Number of colleagues, suppose *five:* parts taken by them, suppose undistinguishable. Here, then, he who had most of the merit, or even the whole of it, may, instead of the whole of the honour, have no more than a fifth part of it.

Thus, by means of the multiplicity of the hands, will the probability of the ultimate adoption of the most apt work be diminished, as it were, at both ends: diminished by the conjunct operation of the two opposite moral forces: of the inducements to bad workmanship, the force will be increased — of the inducements to good workmanship, the force will be diminished.

Another circumstance there is — by which, more particularly in a case such as the present, by and in proportion to the number of the working hands, the probability of bad workmanship, and the probable badness of it, are increased. So many workmen, so many individuals, by each of whom a particular *sinister interest of his own* may be possessed; and, in the texture of so vast a whole, — arrangements, indefinite in number, extent, and importance, inserted: inserted, under favour of that *exclusory initiative*, which would be done away by the above proposed *open* mode. On this as on every other occasion, each particular interest will of course be using its endeavours to make provision for itself, at the expense of all opposing interests. The interests, which each of these workmen will find standing in collision with and in opposition to his own, are the universal interest, and the several particular interests of his several colleagues. Of his own particular interest, or that of any particular connexion of his, no one of them all will willingly consent to make sacrifice: if at all, not without a degree of reluctance proportioned to his conception of the importance of the sacrifice: at the same time, in regard to sacrifice of the universal interest, scarcely in the breast of any of them will the degree of reluctance, if any, be so great. Why? Because, in the close situation here in question, independent of public opinion every one of them is; no one is so of any of his colleagues: thus circumstanced, his own interest no one will sacrifice to the rest; the public interest, every one. As to *proportions*, true it is — that, in respect of influence, wheresoever operating — whether within doors or without — whatever be the number of these collaborators, no such assurance as that of an exact *equality* can have place. Power, opulence, talent, reputation — in every one of these may be seen an efficient cause of influence: and in regard to each of these, in how ample a scale gradations may have place, is sufficiently manifest. But, in a small knot of men, each of them so circumstanced, that for an indefinite length of time it may be in his power at every turn to stop the course of the rest, another instrument of influence there is, and that is *pertinacity:* — in the language of those by whom, on the occasion in question, the exercise given to it is not approved — *obstinacy:* an instrument, the influence of which is capable of being full as great as that of any of the four others: but, proportioned to pertinacity on the part of one individual is *vexation*, or say *annoyance*, on the part of the rest: annoyance, and thence the amount of the sacrifice in all shapes, which each of them is willing to make, on condition of being rid of it. In an English jury, with this single weapon, how often has not one man overpowered eleven others!

Interest — *sinister interest*, has here been mentioned for shortness. But *interest-begotten prejudice, authority-begotten prejudice, habit-begotten prejudice*, and *inbred intellectual weakness*, are, each of them, not less capable of suggesting arrangements inimical to the greatest happiness of the greatest number, and at the same time of giving birth to pertinacity, not always less intense than such as is produced by *sinister interest*.

By means of the vitiating influence of the *multiplicity* so often spoken of, — suppose an unapt work produced in a legislation committee, — proportioned, in this case, to the degree of confidence reposed in that select body — in that selection of the select — will be its probability of making its way through the several other appropriate authorities: — not to speak of the national mind at large. True it is — that if by the members of the legislative body at large, it be seen or supposed to be, in this or that part, adverse to their respective particular interests — true it is, that, in those parts respectively, any such alterations as seem well adapted to the rendering it conformable to those same interests, will willingly enough be made in it. But, so far as, in those parts of it which are adverse to the universal interest, nothing particularly adverse to these same particular interests happens to be observed, — the confidence, the existence of which stands demonstrated by the choice made of the members of that same select and close body, will naturally prove sufficient to carry it, without considerable opposition, through the body at large. Such will be the case, where the sinister arrangements introduced into the original draught by the sinister interests of the several workmen of all classes are simply *not unfavourable* to the particular interests of the members of the body at large: much more surely in so far as

they are seen or supposed to be *decidedly subservient* to these same particular interests. To the situation of the monarch, where there is one — of the monarch, his subordinates, dependents, and partisans, these same observations may of course be seen to have equal application. And thus, under a form of government, having for its declared end in view the greatest happiness of the greatest number — thus, by the conjunct predominance of a cluster of particular and sinister interests over the universal interest, may existence come to be given — given even to a sanctioned work — as inimical to the greatest happiness of the greatest number, as even to that proposed, but happily not yet adopted, penal code, with which the Spanish nation was so near being afflicted.

Note, that in this *close* mode, any number of *stages of subordination* as between workmen and workmen may have place: in each stage, any number of workmen, and on the part of each, with or without observance and consent of superiors, this or that pernicious suggestion, of sinister interest, interest-begotten prejudice, authority-begotten prejudice, or inbred intellectual weakness, may have slipt in, and contributed to give their increase to the aggregate mass of inaptitude in the work.

In each stage, in the breast of each individual, contributing or not contributing labour, but in either case exercising influence, there will be two distinguishable masses of particular and sinister interests, in perpetual action against the universal interest: namely, 1. Whatsoever sinister interests may chance to appertain to him in his individual capacity. 2. Whatsoever particular and sinister interests appertain to whatsoever particular class or classes of men he happens to belong to: and, to the same man it may happen to belong, at the same time, to little less than the whole number of the classes included in the aggregate of the aristocratical classes.*

Suppose even the case to be that of a *commonwealth*, altogether clear of monarchy, or a *monarchy* in which the monarch has no share in the *legislative power*. The workmen, on whom, in the first instance, the texture of the work depends, will in this case be the members of a *legislation committee*. The sinister interest, here predominant, will be the interest of the *legislative aristocracy:* and, in the breast of each member, whatsoever other branches of the aristocracy it happens to him to belong to, to his larger sinister interest will be added those their several smaller sinister interests. As to the sinister interest belonging to the *legislative aristocracy* as such, it is an object, the existence of which is obvious and undeniable. What it prompts to is — the giving, to the aggregate mass of emolument, power, and factitious dignity attached to the *executive* branch of the government, the utmost magnitude possible, that, in their own persons, or those of their respective connexions, the shares obtained and enjoyed by the members of this legislative branch may be proportionably abundant.

As to the other branches of the aristocratical interest — of itself, no one of them can do anything for itself. But, with the assistance of the legislative branch, they may, each of them, do anything. The sinister interest, common to the legislative body, has therefore, for its natural ally and supporter, the sinister interest of every one of those other branches.

To the reader, according to the constitution of the political state he belongs to, — to the reader it must be left, to take note and observation of these several *stages:* with the present design, no such detail would be compatible.

II. Lastly, as to want of *consistency*. This, to an extent more or less considerable, has already been stated as an *evil* that will unavoidably have place, if by one workman one part of this great whole be executed, by another workman another. Moreover, what is sufficiently evident, — the inconsistency of the whole will be the greater, the greater the number is of those same parts executed, each of them by a different hand.

Vast is the diversity of *design* incident to so vast a work: vast again is the diversity incident to the mode of *execution:* correspondent to the diversity in both, will be the diversity that can scarce fail to have place in respect of the *leading terms*. If he who is occupied in the penal code is not at the same time working on the civil code, — neither in respect of

* In every civilized nation there exists a *natural* aristocracy, of which the following may be stated as the main branches, having each of them its own particular interest: namely:—

1. The legislative aristocracy.
2. The executive or say official aristocracy.
3. The lawyer aristocracy.
4. The landed aristocracy.
5. The moneyed aristocracy.
6. The ancestry aristocracy.
7. The literary aristocracy.
8. The fine-arts aristocracy.
9. The spiritual aristocracy.

In a monarchy, to these are added two *factitious* branches: namely —

10. The titled aristocracy, constituted by factitious dignity.
11. The established spiritual aristocracy.

In some of these main branches, minor ramifications may be distinguished, having their several more particular interests, between which more or less of collision is incidentally liable to have place.

Under a monarchy, no one of all these interests being able to advance itself of itself, all of them cluster round the monarchical interest, and add their respective forces to the force, whatever it be, by which it is enabled to carry on, for its own benefit, the *sinister sacrifice*.

method, nor thence in respect of language, will the one fit in to the other: and so, as between the compound of these two codes, compared with the constitutional code. Much to be regretted will, at the least, be the obscurity and ambiguity that will ensue: proportionable the change, which, in one or both, will be necessitated: unless for the affliction of the subject citizen, these two so intimately connected imperfections be suffered to remain unremedied. In this state of things, if, of two of these parts, namely, the penal code and civil code, one be allotted to one of two draughtsmen, the other to the other, what will be to be done? Upon the coming in of the two draughts, even supposing the approbation bestowed upon them ever so exactly equal, a necessity will be seen, for taking one of them for the groundwork, and altering the other in such sort as to make the several portions of it to fit in to the corresponding portions of the first. But, to the difficulties that would be attendant on any such operation, or the time that would unavoidably be to be expended on it, no limits can be assigned: while, by the simultaneous and all-comprehensive mode of operation here proposed, all such difficulty, with its attendant delay, is of course avoided.

So, as between the *main body* of the law, or say system of *substantive law*, and the system of the *law of procedure*, or say *system of adjective law*, included in each such *part* as above. In each part, the *adjective* branch has for its object and business the giving execution and effect to the *substantive* branch. Conceive now, in the penal and civil parts, taken together or separately, a system of *procedure*, having for its object the giving execution and effect to a system of *benefits* and *burthens*, of *rights* and *obligations*, the forms and denominations of which remain to be determined: the system of *substantive law*, the production of one workman; the system of *procedure*, which is to give execution and effect to it, that of another: both works going on without concert at the same time. In such a state of things, in what case is he, to whose lot it falls to pen the system of *procedure?* Instead of *seeing* the system of *offences* as exhibited in the penal code, and that of the efficient causes of *rights* and *obligations* as exhibited in the civil code, he is reduced to *grope* for all those objects in the dark in the region of conjecture.

Section 8.

The greatest happiness of the greatest number requires — that such original draught, being the work of a single hand, be known to be so. *Hand, known to be but one.*

Reason. Else, neither of the inducements to good workmanship afforded by the singleness, will have place.

Suppose that, the case really being, that, in the composition of the work in question, no more than one workman has had anything to do, — a notion, however, has place, that another, or others, in whatsoever number, have each of them borne a part in it. In this case, as to what depends upon the *responsibility*, — the tutelary force of the bridle it applies, on the only existing workman, is by those *imaginary* collaborators lessened, as much perhaps as it would be by so many *real* ones. As to what depends on the *honour* and the *encouragement* it affords, this too is in much the same case. So many imaginary assistants, of so much of the honour is he a loser, though there is no one by whom it is gained.

True it is — that, to the evil of *want of consistency* on the part of the work, this circumstance has no application. Suppose the parts of the work executed, all of them, by the same hand, — no want of consistency will be produced in it by the erroneous supposition of their having been executed by different hands. But of the two evils, this, it has been shown, is the minor one.

Section 9.

The greatest happiness of the greatest number requires, that the work, being the work of a single hand, and known to be so, it be known whose the hand is. *Hand, known whose it is.*

Reason. Else, as above, neither of the inducements to good workmanship will have place.

Only in so far as it is known *who* the workman is, can the work be known to be the work of no more than a single hand. As to *knowledge*, true it is — that, strictly speaking, no such thing is *here* possible. In addition to the declared workman's own declaration, all that, in relation to the matter, can be absolutely *known*, is — that by competent authority, a suitable declaration has been made — a declaration (suppose) to this effect: — "*This man*" (naming him) "*is the man, by whom alone this draught*" (naming it) "*has (we believe) been penned.*" On the other hand, if the declaration were no more than to this effect — "*The work is the work of a single hand,*" the hand not being named, the circumstance of the concealment would be apt to operate in disproof of the fact in question — of the fact thus mysteriously and imperfectly declared.

Suppose now, that, notwithstanding both these declarations, so it is, that the individual whose work the draught is declared to be, had not really borne any part in it. Still, however, so far as depends upon *responsibility*, here is an individual on whom it attaches, and in its entire state.

Lest it be supposed to have been over-

looked is this case brought to view, rather than on account of any such importance as seems attached to it. In a case such as the present, no great probability seems to belong to any such supposition as that of a fraud, concerted between two persons, a real workman and a pretended one, of whom the real one shall have found adequate inducement, for foregoing the honour of a work of this sort really his, and for being at the same time accessary to a solemn falsehood and imposture, — while the pretended workman, for the sake of that same honour, shall have found adequate inducement for exposing himself to his part of the dishonour of that same falsehood and imposture.

The only case that presents so much as the faintest colour of probability seems to be this:—For the hope of remuneration in the naturally attached shape above mentioned, — an individual, having *interest*, or say *protection*, without *aptitude*, engages another, who has *aptitude* without *protection*, to execute the work, and assign over to him the honour of it, with the looked-for consequences. In certain *schools* and *colleges*, this sort of traffic has not been altogether an uncommon one. In the present case, if the danger were thought worth combating at such a price, it might be pretty effectually excluded by a *public examination*, to which, previously to his entrance upon any office of the sort in question in remuneration for his legislative draught, the declared author should be subjected.

Remains the case, where, by one individual, by whom the principal part in the work has been borne, — assistance, in one shape or other, has been derived from the labours of others, in what number is not material: he at the same time declaring himself by name as *the* workman, by whom the work has been executed, saying nothing of any others. This case presents itself as being a completely natural and probable one. But, in this case, the grand point — the *responsibility* — is sufficiently secured: and, as to the *honour* — the encouragement, — if, for the sake of the assistance in question, the only individual interested is content to part with more or less of it, the public service profits by the exchange, and no individual suffers by it.

Section 10.

The greatest happiness of the greatest number requires, that, for the drawing of the original draught, all *foreigners* be admitted into the competition: and that, in so far as applicable, unless it be in all particulars taken together decidedly inferior, the draught of a foreigner be employed in preference. *Hand, a foreigner's preferable.*

That, on this occasion, admission should be given to all foreigners has been shown already. for all foreigners are men.

What remains here to be shown is — that, for the original draught, aptitude in other points equal, the hand of a foreigner is even preferable to that of a native; and, on that account, to bespeak attention for any such draughts, as chance may have drawn from any such hands. Nor is the position altogether superfluous: only in proportion as attention is bestowed upon the work, can any admission given to it be of use.

On this occasion, again, as on every other, if a solution be desired of the question concerning the probability, absolute or comparative, of appropriate aptitude, it must be considered separately and successively, with reference to the several elements of which such aptitude is composed.

I. As to appropriate *moral* aptitude. Note on this point, how superior the ground is on which the nature of the case has placed the expectation of pure service at the hands of a foreigner as such. In both situations, the obligation, of including in the work a perpetually interwoven *rationale*, will have been a most substantial security. In both situations, with or even without a *rationale*, the principle of universal admission and that of singleness in workmanship, will have been two additional securities. Still, however, in the case of the native, there will be the swarm — the unascertainable and incalculable swarm — of personal connexions; thence of particular and *sinister interests and affections;* from the irresistibly-tempting and seductive influence of which, the situation of the foreigner bespeaks him free.

For giving effect to these same sinister interests and affections, the native would, in those same connexions, find a *support* more or less extensive and efficient: the foreigner, no such support.

Supposing him employed, — the foreigner will naturally, if any attention at all be paid to his draught, be an object of more notice than the native, and thence of proportionable *jealousy:* — he will be more closely watched: of any sinister interest or affection, supposing him under any such dominion, any bad effects will, in a corresponding degree, be more likely to be held up to view and obviated.

II. Next, as to appropriate *intellectual* aptitude. On the present occasion, this element of appropriate aptitude will require to be further decomposed: decomposed into appropriate *judgment* and appropriate *knowledge.*

1. As to appropriate judgment. In regard to this branch of appropriate intellectual aptitude, on the occasion of the question as between a single hand and divers hands, mention came to be made of the erroneous tracks into which the pen of every such draughtsman stands exposed to be led, by prejudice in

different shapes: thence, the probability of correspondent aberrations, on the part of the work, from the all-comprehensive *end* so often mentioned. These prejudices will, to a large extent, be of a *local* nature: peculiar, in *degree* of strength at least, if not in *kind*, to the country in question. From the influence of these causes of error, while the native labours under it, the foreigner stands free.

The foreigner will, indeed, have *his* prejudices to contend against, and in particular his *local* prejudices. But here, as in the case of interests and affections, while those of the *native* will find *support* in the prejudices of all around him, — for those of the foreigner, not only will there be no such *support*, but there will be *opposition:* opposition, by the supposition, from *reason*,—and moreover from *counter prejudices*.

2. Next remains to be considered, appropriate *knowledge*.

In relation to this branch of appropriate intellectual aptitude, the native, it is true, in the ordinary state of things, possesses an advantage: an advantage alike obvious and unquestionable. On his part, extent of acquaintance with the *local* and other peculiar circumstances of the country in question, is at its *maximum:* on the part of the foreigner, at its *minimum*.

Supposing appropriate aptitude in all its other elements exactly equal on both sides, the advantage of the native under this head would therefore, obviously and unquestionably, be sufficient to turn the scale in his favour, and put an exclusion upon the foreigner altogether.

But, for the reason already brought to view, it will have been seen — whether, individuals out of the question, and situation being compared with situation, in the several articles of appropriate *moral* aptitude, and appropriate *judgment*, the superiority be not, and in no inconsiderable degree likely to be, on the side of the foreigner.

From his inferiority in the scale of appropriate *knowledge*, as above particularized, no objection whatever to the placing the business in his hands will be found to result. For, in the first place, the importance of the deficiency in his case is not so great as it will be apt to appear: in the next place, be it what it may, a complete supply to it stands assured -- assured, from the authority, to which his draught will of course be referred.

1. In the first place, the *deficiency* is not so *great* as it will be apt to appear.

Of the circumstances on which the demand for legislation, and the nature of the course required to be taken by legislation, depends, — some are common to all countries, to all races of men, and all times: say, in a word, *universally applying circumstances:* others are in different countries, in the case of different races of men, and in different times, more or less different; say, *exclusively applying circumstances*.

In comparison of the *universally-applying*, the extent of the *exclusively applying circumstances* will be found very inconsiderable. Moreover, throughout the whole of the field, the exclusively applying circumstances will be found to be circumscribed as it were by, and included in, the universally applying circumstances. The great *outlines*, which require to be drawn, will be found to be the same for every *territory*, for every *race*, and for every *time:* only in this or that *territory*, only for this or that *race*, only for this or that *time*, as distinguished from this or that other, will the *filling* up of those lines be found to require to be, on this or that point, more or less different. In every country, and for every race, at every time, — of the all-comprehensive and only defensible end — the *greatest happiness* of the greatest number — of the four most comprehensive particular and subordinate *ends*, viz. *subsistence*, *abundance*, *security*, and *equality* — with their several divisions and subdivisions, will the description be found the same: only of the *means* best adapted to the accomplishment of those great *ends*, in this or that country, or for this or that race, at this or that time, will the description, in this or that particular, be found, in a greater or less degree, different.

On pursuing the inquiry further and further into the region of particulars, the result will still be found the same. The same, in every country, for every race, and at every time, will be found the *misdeeds* by which security is liable to be affected; the *classes* and *genera*, of the names of which the list of those misdeeds will require to be composed; and the *definitions*, by which the points of *agreement* and *difference* as between one genus of misdeed and another, as well as between each of them and *innocence*, or (what will come to much the same thing) *unpunishableness*, will require to be determined and expressed. In this or that country, in the case of this or that race, at this or that point of time, — circumstances may indeed afford room for producing injury, in this or that particular shape, in which, in this or that other country, in the case of this or that other race, at this or that other time, man is not exposed to it. True. But the *species* of mischievous act to which the mischief, when in this particular shape, may be said to belong, is a *species*, which, upon observation, will be found comprehended in a *genus* of injury, to which, in every country, men of every race stand at all times exposed.

Thus, a *corporal injury* will be an injury everywhere, and to every human being. But, in Hindoostan, for example, to the feelings of a certain race, corporal injury is produced,

by a species of contact, by which no injury would be produced in any part of Europe.

So again in regard to *simple mental injuries*: including so many various forms of as yet undenominated injury, which have their seat nowhere but in the mind. By a portion of audible discourse, or by a visible exhibition, by which contempt is expressed, for opinions, to this or that effect, entertained in relation to *religion*, — pain of mind is liable to be produced. According to the amount of it, in the case of pain produced from this source, as in the case of pain produced from any other, — the act, by which it is produced, may, under certain circumstances, be with propriety regarded and dealt with as injurious everywhere: but, in some countries, and in the case of some persuasions on matters of religion, the description of the thus injurious discourse, or exhibition, will be of one sort; in others, of another.

Of the distinction between those *universally applying* and these *exclusively applying* circumstances, the above examples will, it is hoped, be found to afford a conception sufficient for the purpose. The distinction is capable of being carried, and in the proposed code will of course be carried, throughout the whole field of legislation. In this place, to pursue it further, would be to force so much of the matter belonging to the proposed code, into a slight preliminary sketch extraneous to it.

Such being the distinction, now for the application of it to the case in hand. Of whatsoever country the draughtsman be a native, these circumstances, which are of universal occurrence and applicability, may be equally and perfectly present to his notice. For those shades of difference, which are peculiar to his own country, the native, as compared with the foreigner, will be — if not exclusively, at least preferably, qualified. But, suppose two men, the one a foreigner, the other a native, and the foreigner more fully conversant with the circumstances of *universal occurrence* than the native, — and in all other particulars better qualified for making, throughout the whole field of legislation, that provision which those same circumstances require, — this supposed, that which without much difficulty may happen is — that, even in regard to these same particular circumstances, it may be in his power to afford to the work a degree of aptitude, such as, but for him, could not have been possessed by it.

For though, by the supposition, so far as depends on particular arrangements conceived *in terminis*, he is not competent to the filling up of the outline; — yet, by virtue of his comparatively greater command over the whole field, it might be in his power, by means of *instructions* furnished by him in general terms, to afford, to any natives, on whom the task devolved, superior assistance: assistance, of such sort, as should enable them to give a more apt execution to it, than without him it would have been in their power to give to it. In their *power* — not to speak of their *inclination*: for, considering the atmosphere of sinister interest and prejudice, in which (as hath been seen) all native functionaries, as such, have to live and move, — this is a distinction which should never be out of mind.

II. In the next place, to the deficiency, be it what it may, a complete *supply* stands assured.

The hands from which, of course, it will in the first place be received, are those of the *legislation committee*

To the aptitude of the supply from this quarter, one moment may present an objection, but another will dispel it.

By the supposition (it may be said) these natives will be labouring under those causes of inaptitude — those sinister interests and affections, as well as prejudices — by which their appropriate aptitude, as well in point of *moral* aptitude, as in point of appropriate *judgment*, is, according to you, placed so much below that of the foreigner. True: but, by that same supposition, the draught — the *groundwork*, which they will have to work upon — is a draught, not drawn by their own hands, nor by those of any other native, but by the foreigner: and it is by *him* that it has been furnished with its rationale. In the *outline*, then, of his drawing, — with or without the inspection above spoken of, will they find a check to, and a security against, the effective predominance of those same sinister interests, and other causes of inaptitude.

In a word, in section 5, under the head of universality of admission, it has been shown — with how promising a degree of efficiency the proposed open mode, with its string of *rationales*, will apply to the mouth of the man in power, the only bridle which the nature of his situation admits of: in the case of the foreign draughtsman, this bridle will afford the same security as in the case of the native.

Now as to all elements of appropriate aptitude taken together.

For the direct and appropriate use made of it, — the work, whatsoever be the workman, will depend altogether upon the constituted authorities, and in particular on the legislative body. But, in regard to this use, two things may be stated as altogether certain. 1. That they will not give adoption to it, unless in *their own* judgment it be decidedly more apt than any draught sent in by a native workman; 2. That neither will they thus make it their own, unless, in their own expectation, the like opinion will be entertained of it by *the people* at large. For, on their own part, what other inducement could they find for giving to it any such acceptance? If, in

their view, though equal, it were no more than barely equal, to the most apt work produced by a native hand — in this case, interest, prejudice, affection in all manner of shapes, would concur in urging them to give the preference to the work of their fellow-countryman: and if, in their minds, any serious apprehension should have place, lest, after obtaining acceptance at their hands it should fail of being generally acceptable to the people, — by what adequate inducement could they be brought to hazard the good opinion of their constituents, by fastening upon their necks any such work? — a work which, in the nature of the case, could not be contributory to the greatest happiness of the people in question, any further than it were thought by them to be so.

How intimate the connexion is between the two questions — between that concerning admission and this concerning preference, — is sufficiently manifest. The truth is — that it is rather for the sake of the question concerning *admission*, than for its own sake, that the question concerning *preference* is here argued. What is meant to be said to the reader is to this effect: — " Fear not to give *admission* to the foreigner's draught: for if, in its proposed character of a basis for the sanctioned code, a draught, having a foreigner for its author, and having, as here proposed, been admitted, comes to be adopted, — the probability is — that, so far from being in the scale of aptitude *inferior* to the most apt draught sent in by a native, it is, in a high degree, *superior*."

So again in regard to *preference*. If (says somebody) — if, as you have said, it is only in case of its being regarded as considerably superior in the scale of aptitude that it is likely to be preferred, and if at the same time it is in that case likely to be preferred, — to what use plead for the *position*, that if it be but equal in aptitude to the most apt of those sent in by natives, it is entitled to the preference? The answer is — the observations here may be considered as made to each reader individually: and on that supposition I say to each — If among the several draughts there be one which, being a foreigner's, is in your eyes *equal* in aptitude to the most apt of all such as are sent in by natives, — fear not to give *your* suffrage in favour of it. Why? Because, unless in the legislative body a general persuasion has place — not only that it *is* more apt than that of any native, but that it is likely to be regarded as such by a majority of the people, — it will not be adopted: — therefore, supposing the draught ever so unapt, there is no likelihood, that any vote you can give in support of it will be attended with any pernicious consequence.*

Section 11.

On the part of an *individual*, proposing himself as draughtsman for the original draught

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* In situations, in which the choice of operative rulers *depends* upon the people, the jealousy of foreigners has, for want of reflection, been copied, from situations in which the choice does *not* depend upon the people. For want of reflection: for, on reflection, nothing (it will be seen) could be more groundless, than any such apprehension, as that a set of men, be they who they may, will be imprudently partial to a foreigner in preference to themselves, or even to one another. Nothing can be more contrary to theory derived from the universal nature of man: nothing more completely unsupported by particular experience.

Hereupon presents itself the idea of a practical measure, for which, if not in strictness relevant with reference to the present topic, the promise of usefulness, coupled with the assurance of innoxiousness, may perhaps be accepted as an excuse. In the case of a legislative body the members of which are freely chosen by the people, why should not they aggregate to themselves a few members, selected by them from other political states, whose constitution bears more or less analogy to theirs. In the case of these foreign associates, to the right of *speech* and *motion* need not, nor should, be added the right of *suffrage*: for, to any use derivable from information, afforded by a man in the character of a *witness* or an *advocate*, would be applied — not addition but subtraction, by any share given to him in the power of a judge. *Power*, it would *not* be *competent* to them to give: *information*, so it but afforded any the least promise of being of use, no man can be incompetent to receive.

To the case of a new-formed government, struggling under all the difficulties opposed by inexperience, the idea is more eminently applicable.

Take, for instance, the case of Spain. What should hinder the legislative body in that country from calling in the assistance of a few distinguished individuals, one or more from each one of several foreign countries? Portugal, Italy, Germany, France, and England, for example; or Portugal from calling in the like assistance from Spain, in addition to those other foreign countries?

Still more eminently beneficial — not to say undeniably needful — would similar assistance be, to the several newly-planted or planting states in America, offsets from the Spanish and Portuguese monarchies. In Spanish Ultramaria, the assistance might have for its sources Spain and Portugal: in Portuguese Ultramaria, Portugal and Spain. But, to any one of these infant states, beyond all comparison more useful would such assistance be, as the Anglo-American United States are so exclusively competent to afford: if, for example, *Congress*, in which the quintessence of Anglo-American wisdom is concentrated, were invited to make the choice. In this case, any apprehension of sinister advice would be groundless. Why? Because no sinister interest would have place — and because, if it had place, no chance would it have of obtaining its ends. An aggregation of this sort would be — not only a source of *information*, but a bond of *fellowship*.

Note, on this occasion, the practice of literary and scientific societies: particularly in so far as freedom has place in them. In these cases, no political power being possessed, accession of associates is not dreaded.

of a code of laws, willingness or unwillingness to interweave in his draught a *rationale* as above, is the most conclusive preliminary test, and that an indispensable one, of appropriate aptitude in relation to it. *Willingness as to rationale, draughtsman's test.*

The four grand points in question, are (it has been seen) the proposed *all-comprehensiveness* of the work — the *rationale* proposed to be interwoven in it — the *universality* of the admission proposed to be given to all competitors for the honour of furnishing the original draught — and the choice of a *single workman* for the work, to the exclusion of every greater number. If what has above been said in relation to the usefulness and importance of these several points has proved satisfactory, — the position, which forms the title of the present section, will already have received its proof: if not, nothing further, that can with propriety be ranked under this head, affords any promise of being of use.

On the constituted authorities alone (it may be observed, perhaps) will depend the course taken, in relation to all these several points, and in particular that which regards the *rationale:* and on that account, willingness or unwillingness on the part of individuals was not (it may be thought) worth speaking about. But, supposing a work of this sort in contemplation, volunteers may, for this as for any other branch of service, be, without much strain upon the imagination, expected to offer themselves, antecedently to any determination taken by the legislature. On this consideration is grounded the invitation here given, to all whom it may concern, to consider — whether, in comparison of the workman who *is* willing to give this security for good workmanship, any one, who is *not* willing to give it, has any pretension to be heard.

Section 12.

On the part of a *ruler*, willingness or unwillingness to see established an all-comprehensive code, with its *rationale* as above, and to receive original draughts from all hands, are among the most conclusive tests of appropriate aptitude, in relation to such his situation. *Willingness, as to rationale and universal admission, legislator's test.*

That which, in a less pointed manner, has been applied to the situation of proposed draughtsman, will be seen to apply, in a more pointed manner, to the situation of actual legislator.

Whence comes it, then, that in the Anglo-American United States — whence comes it that, under the only form of government which ever had, or ever could have had, for its end in view, the greatest happiness of the greatest number, — the constituted authorities have been so generally, though happily not universally, shrinking from this test? The answer shall be given in the words of two of them. See *Testimonials.* VII. 1 & 2.

What the sacrifice is that is involved in the endurance of this test cannot have passed unobserved. How much easier any such sacrifice is to propose than to bear a part in, must have been alike manifest. But — the greater the difficulty, the greater the glory: the greater the difficulty, the smaller the number of those, whose magnanimity enables them to surmount it, and the more exalted that virtue, to the embrace of which so few will be able to aspire.

PART II. — TESTIMONIALS.

CONTENTS.

☞ The following are References to Testimonials already edited, in a work, intituled, *Papers relative to Codification, &c. London*, 1817: (*vide supra*, p. 453, *et seq.*) and therefore not here repeated. The occasion on which these documents were penned, was that of a similar offer made to the several political States in question.

X. Anglo-American United States.

1. Albert Gallatin, Minister Plenipotentiary to the Court of London, to Simon Snyder, Governor of Pennsylvania, expressing his opinion in favour of Mr. Bentham's relative aptitude. London, 18th June 1814.

2. Governor Snyder's Message to the *Senate* and *House of Representatives* of the State of Pennsylvania, recommending Mr. Bentham's offer to their consideration. Harrisburg, in Pennsylvania, December 5th, 1816.

XI. Russia.

1. Alexander, "*Emperor of all the Russias*," to Mr. Bentham, declaring the orders given by his Majesty, to the constituted authorities under him, to consult Mr. Bentham, by questions propounded to him, on the subject of the Code then in preparation: sending at the same time a present, which, with all due acknowledgment, was, without being seen, returned.

N. B. Anno 1805, appeared a Russian translation of the first of Mr. Bentham's works, edited by Mr. Dumont. The translation had been made by order of the constituted authorities, and is dedicated to the Emperor. Much about that time, appeared another translation, by an uncommissioned hand.

XII. Poland.

Prince Adam Czartoriski of Poland, to Mr. Bentham, requesting, for that country, his assistance in relation to the Code expected at the hands of the Emperor Alexander. Vienna, 5th April 1815.

N. B. Papers 5 and 6, under the title "Portugal," and the papers under the title "Greece," were printed in an Appendix in 1827.

I. ENGLAND.

Opinion of the English House of Commons in relation to Mr. Bentham: extracted from the Debates of 2d June 1818.

*** The occasion on which this opinion was declared, is that of a motion made by Sir Francis Burdett, Member for Westminster, for the purpose of introducing a series of *resolutions*, framed, and known to have been framed, by Mr. Bentham, at Sir Francis's desire, to serve as a basis for a reformed representation of the people, on the ground of *universality, secresy, equality*, and *annuality* of *suffrage*.

The publication, from which the matter is extracted, is intituled, "Hansard's Parliamentary Debates." Mr. Hansard is son to the printer to the House of Commons.

The ground, on which it is stated, in this general way, as *the* opinion *of* the House of Commons, is this: — In the House, as in the nation, there were, then as now, three parties: the *Tories*, the *Whigs*, and the *Radicals:* these last so called as being the partisans of a *radical* reform in the Commons' House. Of the *Tories*, the leanings are on the side of *monarchy;* of the *Whigs*, on the side of *aristocracy;* of the *Radicals*, on the side of *democracy*. On this occasion, Sir Francis Burdett spoke on the side of the *Radicals;* Mr. Canning, on the *Tories'* side: Mr. Brougham took the lead on the *Whig* side. On the *Radical* side, there was but one speech — that of Sir Francis Burdett: on the *Tory* side, but that one speech — that of Mr. Canning: on the *Whig* side, there were *four* speeches — Mr. Brougham's, Mr. Lamb's, Mr. Parnell's, and Mr. William Smith's. In no speech, other than Sir Francis Burdett's and Mr. Brougham's, is any mention made of Mr. Bentham: whatever was said in approbation of him by those two gentlemen, stands therefore uncontroverted. Generosity and discretion are competitors for the honour of this silence. Sir Samuel Romilly, known as the old and intimate friend and disciple of Mr. Bentham, was then on his seat in the House: by his silence, the particular appeal, made to him by Mr. Brougham, stands confirmed. He was, heart and head, a *Radical:* but could not, consistently with any chance of doing what little good he was permitted to do in matters of detail, declare himself as such. Mr. Brougham, on this occasion, is seen taking, off the shoulders of the *Tories*, the burthen of the defence of the existing system against the attack of the *Radicals*. As to *interests*, in the existing system of waste and corruption, the Whigs and the Tories have one common interest: the only difference is — as to the class of *hands*, by which the profit shall be reaped.

At the end of the report of Sir Francis Burdett's speech, "The above," says the reporter in Hansard's debates, "is an imperfect account of a speech, which was listened to by both sides of the House with the deepest attention." — *Ed. of original Edition.*

Extracts from Sir Francis Burdett's Speech.

"Since that period, the question of reform had been greatly agitated: the ablest men of the age had fully discussed it, and sifted it to the bottom. Above all, Mr. Bentham had, with unrivalled ability, proved how easy and safe it was to carry the principles of reform into practical effect."

"Annual Parliaments and the most extensive mode of suffrage had been advocated by the late Duke of Richmond, in his famous letter to Colonel Sharman, with a strength of argument quite unanswerable. The same principles had been investigated and maintained with additional force and acuteness and philosophical accuracy, accompanied with complete demonstration of the safety with which they might be reduced to practice, by Bentham. If any anti-reformer could answer Mr. Bentham's arguments, he would do more efficacious service to reformers and anti-reformers, than could ever be effected by dealing out false imputations and unsubstantiated slander, these being, with a due portion of misrepresentation and exaggeration, the only intellectual weapons hitherto employed by the enemies, against the friends, of reform."

"If it could be shown that the most comprehensive suffrage would produce no inconvenience in practice, it ought not in justice to be withheld. Mr. Bentham had, by incontrovertible arguments, demonstrated that no danger whatever would arise from the most extensive suffrage that could be established."

Extract from Mr. Brougham's Speech.

"From this charge of inconsistency there was one great authority who was exempt—he meant Mr. Bentham. He had the greatest respect for that gentleman. There existed not a more honest or ingenuous mind than he possessed. He knew no man who had passed a more honourable and useful life. Removed from the turmoil of active life, voluntarily abandoning both emoluments and the power which it held out to dazzle ambitious and worldly minds, he had passed his days in the investigation of the most important truths, and had reached a truly venerable, although, he hoped, not an extreme old age. To him he meant not to impute either inadequate information, or insufficient industry, or defective sagacity. But he hoped he should not be deemed disrespectful towards Mr. Bentham, if he said that his plan of parliamentary reform showed that he had dealt more with books than with men. He agreed with his honourable friend, the Member for Arundel (Sir S. Romilly,)* who looked up to Mr. Bentham with the almost filial reverence of a pupil for his tutor, in wishing that he had never written that work. But Mr. Bentham was a real advocate for universal suffrage. He was a far more sturdy, and infinitely more consistent reformer than the honourable baronet, as he gave votes not only to all men, but to all women also. He drew no line at all; he weighed not with practical nicety the claims of different classes; he recollected that his principle was *universal;* he tossed away the rule and the scale altogether, and without restriction let in all: young or old, men or women, sane or insane, all must vote—all must have a voice in electing their representatives. He did not even sanction the exceptions which the honourable baronet seemed inclined to admit with respect to persons of an unsound mind.

"The veteran reformer (Major Cartwright) had lately favoured the world with a plan of suffrage, illustrated by plates, where balloting-boxes, ball-trays, &c. &c. in most accurate array, met the eager gaze of the much-edified inquirer. Now Mr. Bentham was the patron of the ballot, and his doctrine was, that all who can ballot, may enjoy the elective franchise. The moment a person of either sex was able to put a pellet into a box, no matter whether he were insane, and had one of the keepers of a mad-house to guide him, still Mr. Bentham said, that though he did not support the utility of allowing idiots or mad persons to vote for their own sakes, yet rather than make any distinction, he would allow them, as they could not do any harm, and the unbending consistency might do some good. Mr. Bentham had such an invincible objection to lines of every description, that he could not admit of one being drawn, even at the gates of Bedlam. It was not necessary for him to controvert doctrines of this nature, but they were certainly consistent with each other; and he did not think himself uncharitable in saying, that some of the principles promulgated in that House were nearly as chimerical and visionary without being at all consistent."

In page 1151, stands the following note to the word *Brougham*, at the commencement of Mr. Brougham's speech:—

"As the speech of Mr. Brougham on this occasion was deemed of peculiar importance in a party view, and with respect to the line taken by the Whigs on the question of parliamentary reform, it was hoped he might have been able to print a corrected account of it. But we understand that it was made unexpectedly, without any previous intention of speaking having been entertained by him: so that he could not comply with the wish generally expressed.

Extract from Sir Francis Burdett's Reply.

"The learned gentleman (Mr. Brougham,) whilst he professed himself friendly to reform, had at the same time attempted to render ridiculous the ablest advocate which reform had ever found—the illustrious and unrivalled

* This was said in presence of Sir S. Romilly, and by his deportment and silence stood confirmed.

Bentham. It was in vain, however, for the learned gentleman to attempt, by stale jokes and misapplied sarcasm, to undervalue the efforts, of a mind the most comprehensive, informed, accurate, acute, and philosophical, that had perhaps in any time or in any country been applied to the subject of legislation, and which, fortunately for mankind, had been brought to bear upon reform, the most important of all political subjects. The abilities of Bentham, the learned gentleman could not dispute — his disinterestedness he could not deny — his benevolence he could not but admire — and his unremitted labours he would do well to respect, and not to attempt to disparage. The conviction of such a mind after mature investigation, overcoming preconceived prejudice, could not be represented as the result of wild and visionary speculation; and the zealous and honest adherents of the cause of reform might be well contented to rest the question on the foundations, broad and deep, upon which Bentham had placed it. The learned gentleman, therefore, unless he found himself competent at least to attempt to answer the reasons of Bentham, ought, for his own sake, to be more cautious how he endeavoured to misrepresent those reasons, or to effect by mis-statement, what he was unable to accomplish by argument."

The motion was got rid of, by a motion for the order of the day. On the division, there were: — For the order of the day, ayes 106; noes 0, except Sir Francis Burdett and Lord Cochrane, members for Westminster, the two tellers. The Whigs joining with the Tories. The resolutions moved were by this means prevented from being entered upon the journals of the house. At the instance of Sir Francis Burdett, these resolutions had been drawn by Mr. Bentham. They were employed as drawn, with the exception of two resolutions which had been inserted for the purpose of completing the view given of the constitution in all its parts, but without expectation of their being employed: the one bearing so hard on the monarchical, the other on the aristocratical branch. In addition to the above important changes, a few of minor importance might perhaps be found. They were made, all of them, without concert with Mr. Bentham, he having given up the matter without reserve to his friend, on whom alone all responsibility rested.

Observations from without doors on the above Speech of Mr. Brougham.

As to *minors* under the age of 21, that which is insinuated in this speech, viz. that Mr. Bentham's plan gave admission to their votes, is not true. It provided for their exclusion.

As to persons insane, it forbore excluding them, because it would be almost an even chance whether their votes would be on the right side, or the wrong side; because the greater part would be kept from the place of voting by the judicial procedure that authorized their confinement; because if all that voted were on the wrong side, their number would not suffice to produce any practical ill effect; and because the admission given to them excluded those disputes and litigations to which, in this or that individual case, the question *sanity* or *insanity* might give birth.

On the admission of females Mr. Bentham's plan forbore to lay much stress: because it found no grounds for any very determinate assurance, that in that case the result would be materially different; and because no minds could be expected to be at present prepared for it. But it declared that it could find no reasons for exclusion, and that those who in support of it gave a sneer or a laugh for a reason, because they could not find a better, had no objection to the vesting of absolute power in that sex and in a single hand: so that it was not without palpable inconsistency and self condemnation, that the exclusion they put upon this class could be brought forward.

Criminals are another class, to which, in Mr. Bentham's plan, the door is left unclosed, and upon the same or similar reasons. In this case, considered as a ground of exclusion, criminality means mischievousness, or it is nothing to the purpose. But if mischievousness — that is to say, such a presumption of future as is afforded by past mischievousness, were a sufficient ground for exclusion, — a much stronger ground for it would be afforded by a seat in either house, than by a situation in a penal prison or a hulk: the mischief produced, to which in both houses a vast majority of the members are constantly contributing, is produced upon the largest scale: the mischief produced by the inhabitants of the penal prison and the hulks is produced upon the smallest scale.

The supposed errors in Mr. Bentham's plan of parliamentary reform are, by Mr. Brougham, imputed to his having "dealt more with books than with men." But, in this very instance, it was by his knowledge of men that he was guided, and in the teeth of those notions that are so uniformly inculcated in books: and more particularly in all law books. In these, a fundamental and continually employed principle is — that the quantity of virtue is in the ratio of the quantity of power *directly:* in his conceptions, *inversely.* Witness the twelve Cæsars: witness all eastern monarchs, not to speak of others: witness the allied despots.

Mr. Bentham (says Mr. Brougham) "drew no line at all." This is not correct. He drew a line between the greatest multitude of the *apt* and the *unapt* for the exercise of this power: the same line that, without his knowledge, was at that same time drawing by the framers of the Spanish constitution; viz. that between those who are able, and those who are unable to *read*, that is, to receive the evidence — which the judgment, the electors

give by their votes, has for its grounds. By this line, the benefits sought for in admission, and the benefits sought for in exclusion, are conjoined. It excludes all those who have not made this only proof, that can be made, of appropriate aptitude: and yet it excludes no man: for, this proof, it puts it in the power of every man to give.

Nothing has been more annoying to the corruptionists, Tory and Whig together, than this test, which the Spanish and the English radical reformists were, each without knowledge of the other, thus occupied in framing at the same time. Coming to the *reading qualification*, "This we protest against," says the Edinburgh Review, in its critique on Mr. Bentham's parliamentary reform plan—"we protest against it." So far the pen went. At that point it stuck: stuck like a tongue stopt by a locked-jaw. Reason not being to be found, the whole authority of the work was thus brought out in form to supply her place. The interest—it need scarcely be observed—the same interest which produced the speech in the House of Commons, produced, much about the same time, the article in the Edinburgh Review. Where the shadow of an answer presented itself, the shadow was employed: where not so much as a shadow could be found, the argument was left unnoticed. A sufficient refutation of speech and article together, might, it is believed, be afforded by a bare list of the arguments which in both are passed unnoticed.

As to Mr. Bentham,—on the field of legislation, no man ever copied so little from books: no man ever drew so much from observations made on man. He has not had much acquaintance with drawing-rooms: none with levees. But he has had some acquaintance with cottages, and much with offices. He has been in the secrets of ministers: and, from 1783 to the present, there has not been a ministry with which he has not been in relation, nor from which he has not received marks of confidence.

But Mr. Brougham and Mr. Bentham were, and are, and always have been, friends: and assuredly, not the less so for that speech: and, consistently with that opposition which situations necessitate, nothing (it is seen) could be more friendly, than the opposition given by the friend in the senate to the friend in the closet.—*Ed. of original Edition.*

II. GENEVA.

Desire of the Legislation Committee to receive from Mr. Bentham the Draught of a Penal Code, as expressed by Mr. Stephen Dumont to Mr. Bentham.—London, 19th June 1818.

[TRANSLATION.]

MY DEAR BENTHAM,—I cannot sufficiently express to you, how sensible I am to the interest you take in our *Genevan Penal Code*, and how grateful for the generous offer you make to us: it goes beyond everything that I could have asked of you. Well may you regard this undertaking of ours with a fatherly affection, considering with what truth it is, that, from the first mention of this affair, I declared to our commission, that the whole of the matter I should have to submit to them, not plan only but details likewise, had been extracted from your manuscripts.

The conversation I have been having with Mr. K., and which he will have reported to you, had for its principal object, the showing to him, that what you looked for had, virtually and impliedly, been already done. I had declared to our *penal law commission*, that I found myself at a stand, because in your manuscripts there were gaps, which on my own part I could not flatter myself with the being able to fill up: many articles omitted or left unfinished, under the head of *offences against condition in life:* nothing, absolutely nothing, under the head of *offences against justice*. I said, moreover, that there were many questions, on which I had asked your opinion by letter, and that for answer you had given me an invitation to visit you in the country, in consideration of the difficulty of carrying on discussions, on matters of this nature, in the way of epistolary correspondence. I had requested leave of absence for five months, that I might come to England: and this suspension, though contrary to the general instructions we of the commission had received from our government, considering the recommendation to us to use all the diligence that the nature of the subject admitted of,—was granted without difficulty.

In regard to all such articles as we have drawn up as yet, nothing has been definitively established: the whole will be to be recast, before we have done; so that, as to the *titles*, as well *general* as *particular*, that have passed through the hands of the commission, you are not to consider them as anything but faint sketches, which will be to be gone over again.

It is I that am *reporter* to the commission; that is to say, to me appertains the *initiative* function, and the conduct of the business. Considering that it is under your auspices that it commenced—considering the declarations made by me, that it was on no other ground than that of your manuscripts that I could work,—you have all the moral security which the nature of the case admits of, that everything that you do for us, even the whole matter of the code, without regard to anything we have done already, will be received with gratitude, and examined with care: and, if there be this or that point, on which the commission fails to adopt your ideas,—the failure will certainly not have for its cause

either negligence, indolence, or any unfavourable prepossession: for, the contrary disposition is already effectually manifested, by the admission given to your *plan*, and to the *titles* general and particular. In relation to this matter, I regard myself as warranted in giving you the strongest assurance: and I am persuaded, that there is not one of my colleagues that would not join with me, in soliciting at your hands the magnificent work of which you give me the promise, and which you alone are capable of executing.

I have commissioned Mr. K. to desire of you that, as the work proceeds, a copy may be taken at my expense, that the original may remain in your hands, and because it would not be possible for me to occupy myself with the translation *here*,* considering my other occupations.

III. SPAIN.

1. *Cross of Malta. Patriotic Society of the Friends of the Constitution. Letter, introducing an instrument, constituting Mr. Bentham an Honorary Member — Madrid*, 18*th Sept.* 1820.—(*N. B.* Though this Society was not of the number of the constituted authorities, its freedom, added to its numerousness, rendered its testimony but the more valuable.)

THE patriotic society of *Friends of the Constitution*, established in the *Malta Coffeehouse* of this Corte, have, in a public meeting, heard read, from the tribune, the work, addressed by you to all liberal Spaniards: and, as a testimonial of the gratitude with which the people of this capital in general, and this society in particular, have received and appropriated this one of the literary fruits of your illustrious mind, have the honour of transmitting to you the title of *honorary associate*, saluting you with sentiments of the most intimate fraternity.

The Citizen President PATRICIO MOORE.
ANDREI ROGO, del CANIZAL, *Secretary*.
MANUEL BARCELO, *Secretary*.†

Citizen Jeremias Bentham.

2. *Don Augustin Arguelles, Minister of the Interior, requesting the opinion of Mr. Bentham on the subject of Jury Trial.—Madrid.* No date. Received through the Spanish Mission, 22d January 1821.

DEAR AND MOST ESTEEMED SIR, — I have received, through various channels, your different works on matters of law and politics. Sincerely grateful for such a distinction as this, I feel more and more regret, that my ill fortune deprived me of the pleasure of knowing you personally when I was in your country in 1806–7, and my friend and countryman Mendoza de Rios, who was your friend also, was very desirous that I should visit you, and even spoke to me about it: but a severe indisposition, that tormented me during the two years of my abode in London, deprived me of that pleasure. Though I had proposed to myself to write to you on various matters connected with the events of Spain, I was obliged to abandon the intention for want of time. That which I infinitely desire, and should deem a singular favour, would be that you should communicate to me your ideas on the institution of *the jury*. Out of England, the genuine character of this tribunal is not well understood. A clear and circumstantial exposition, of the mode of proceeding in criminal cases *by jury*, would be very useful: and, at the same time, I should desire, if possible, that you should tell me your opinion on the following queries: —

"In a country where a jury has not been established, and in which there are party-divisions, can it be introduced without that party-spirit's mingling with their verdict?"

"What precautions ought to be taken, to secure the impartiality of the jury under such circumstances?"

I trust that your goodness, and your ardent love of liberty, will pardon this my presumption, availing myself of this opportunity to offer you my respect and friendly consideration, entreating you to dispose, in any way most agreeable to you, of the esteem and attachment of your most obedient servant,

AUGUSTIN ARGUELLES.

P. S. — I write to you in my own language, as many years have elapsed since I wrote in English.

Mr. Bentham.

3. *Don José Canga Arguelles, Minister of Finance, expressing the desire of the Gobierno (composed of himself and the other six Ministers) to receive from Mr. Bentham, in pursuance of an offer of his, the draught of an all-comprehensive and rationalized Code, as described in Part I. — Madrid*, 20*th February* 1821.

Mr. Jeremy Bentham — SIR, Don Diego Colon has transmitted to me the letter you wrote to him, offering to form a complete code of laws for Spain. It belonging to the minister of grace and justice to take cognizance of the object to which it refers, I have delivered it to him, in order that he may arrange with his Majesty such resolution as he may deem fit.

This is all that it has been competent to me to do in this business: but I cannot but declare to you, with the greatest satisfaction on my own part, that the wishes which animate you to serve my country so usefully, are highly grateful to the Gobierno — and

* Meaning, in England.

† The instrument is from an engraving, with blanks for names and dates.

that, for my own part, I have for this long time entertained the highest respect for that mass of intellectual light, of which you have given such resplendent proofs, and which has obtained for you the estimation and honourable name you bear, among all who know how to appreciate merit and distinguished talents. On this consideration, I remain at your disposal, Sir, your most respectful and obedient servant,

(Signed) JOSEPH CANGA ARGUELLES.

4. *El Conde de Toreno, Deputy to the late Cortes, requesting Observations from Mr. Bentham, on the subject of the proposed Penal Code*—*6th August* 1821.

Paris, le 6 Août 1821.

Monsieur J. Bentham—MONSIEUR, Notre commun ami Mr. Bowring veut bien se charger de vous faire passer le volume ci-joint, qui comprend le projet du code penal présenté par le comité à la deliberation des Cortes, qui doit avoir lieu l'hiver prochain. Vous y verrez des choses bonnes, d'autres fort mauvaises. N'allez pas pourtant vous effrayer, Monsieur, des articles qui parlent sur la religion: celà ne passera pas: le tems des persecutions en Espagne n'existe plus, et, malgré toutes les lois, il y a dans le fait une tolerance très grande. Je soumets, Monsieur, à vos lumières, et à la profondeur de votre esprit et de vos connaissances, ce projet. Ayez la complaisance de me faire passer vos observations, d'ici aux derniers jours de Septembre, que je dois retourner en Espagne: je vous en serai extrêmement redevable: j'en profiterai dans la discussion. A qui pourrais-je en effet mieux m'adresser, qu'au constant défenseur de l'humanité, et au profond écrivain de tant d'ouvrages célèbres sur la legislation?

Soyez sûr, Monsieur, du plaisir, et même du devoir, que je me ferai, d'écouter vos conseils dans cette matière, et de l'empressment que je mettrai toujours de vous offrir l'hommage de mon admiration, et de ma profonde consideration. LE COMTE DE TORENO.

(TRANSLATION.)

Paris, 6th August 1821.

Mr. J. Bentham—SIR, Our common friend Mr. Bowring has the goodness to undertake to forward to you the accompanying volume, containing the project of the penal code, presented by the committee, for the deliberation of the Cortes, at its next winter's meeting. You will see in it some good things, others very bad. Do not, however, frighten yourself, Sir, about those articles which speak of religion: they will not pass: in Spain, the time of persecutions is no longer in existence: and, spite of all laws, a very extensive toleration has place in fact. I submit this proposed code, Sir, to the consideration of your enlightened mind. Do me the favour to convey to me your observations on it, between this and the last days of September, at which time I shall be on my return to Spain. I shall be highly obliged by your so doing. I shall make my profit of them in the course of the discussion. An address of this sort—to whom could it be made with more propriety, than to the constant defender of the principles of humanity, to the profoundly thinking author of so many celebrated works on legislation?

Be assured, Sir, of the pleasure, and even of the sense of duty, with which I shall attend to your suggestions on this subject, and of the eagerness with which I shall embrace every occasion, of offering to you the homage of my admiration and of my high consideration. LE COMTE DE TORENO.

5. *Extract from the Report of the Prison Committee of the Cortes, recommending the application of Mr. Bentham's Plan of Construction and Management, styled the Panopticon Plan, to all Prisons throughout Spain and her Dependencies*—*28th September* 1820.

(TRANSLATION.)

The select Committee, named by the Cortes for the purpose of its presenting a plan of regulation and improvement for the *prisons* of the kingdom, has carefully examined the measures proposed by Messrs. Villanova, Calderon, and Canabal, relative to this object, as also the expositions presented by Don Joseph Guyar, with the accompanying documents.

With the same scrupulous attention, the Committee has also examined the work of the jurisconsult, Jeremy Bentham, translated by Don Jacoba Villanova, by whom has been added an *appendix*, and various *notes* of primary importance; and the *Plan for Prisons*, which, with the work aforesaid, he presented to the Cortes, and which they received with particular acknowledgment.

Desirous to avail itself, on this occasion, of whatsoever appropriate assistance should be found obtainable,—the Committee communicated to the government *(gobierno)* the information, which the Economical Society of Madrid had addressed to the *king* through the Home Department: on which occasion, with its accustomed zeal and intelligence, that Society bestows the highest eulogium on the work of the above-mentioned Bentham, and on the observations and appendixes subjoined by the jurisconsult Villanova: expressing its entire approbation of the application of the PANOPTICON principle, in relation to the establishments appertaining to the prisons of the kingdom.

The Committee, after inspection made of these documents, could not do otherwise than agree in great measure with his beneficent

ideas for the service of humanity, which, having been outraged in the highest degree in the buildings hitherto used for the imprisonment of culprits and condemned criminals, calls for the most prompt and efficacious measures of alleviation.

The Committee has obtained a full conviction of the truth of those principles which, with so much wisdom, have been delivered and applied in detail by those intelligent friends of mankind.

☞ Thereupon follows a discussion, continued through nine pages, and occupied principally in the exhibition of the deplorable state of prison and prison management in Spain.

Page 10 commences with a proposed law, in *twenty-six articles*, the whole ranged under three *titles*.

Article 1. In all the *capitals* of the *provinces* of the kingdom, and in those *towns* in which are the seats of judicatories having cognizance in the first instance, — shall be constructed prisons, upon the *Panopticon* plan, or as nearly approaching to it as possible.

Article 25. For the construction of these prisons, the government shall turn to the best account the value of the existing ones, and propose to the Cortes, in the estimates for the expenditure of the *home department*, the sums which it shall propose to allot to this object, as also the *charitable funds*,* which it regards as capable of being employed to the purpose of these establishments.

Article 26. All these measures and provisions shall extend to the provinces of Ultramaria.

6. *Don Toribio Nunez, Deputy from Salamanca to the present Cortes, requesting for Spain and its Cortes the assistance of Mr. Bentham on all matters of legislation. — Extracts. — Salamanca, 20th Dec.* 1821.

Occupied successively by the political affairs of this city and province, and by the consideration of the penal code, submitted to our extraordinary Cortes, and lately referred to a commission of this literary University, of which commission I am a member, — I have been unable sooner to answer your valuable letter. You are, however, assured of my gratitude, by your correspondent, who transmitted it to me from Victoria, and with whom I hope to have further intercourse at Madrid. In that letter, you ask me to give you some account of my past life, and of the accident which brought me acquainted with your works. The praises, which you bestow upon me, are due rather to your principles and analyses, than to the new arrangement in which I have presented them in the "*Ciencia Social.*"† In the concluding part of your letter, you relate to me some particulars concerning the course of your studies, and concerning the Universities of Oxford and Cambridge, and you desire to know what were my studies at that of Salamanca.

Respect and gratitude compel me to oblige you in everything: and the pleasure I feel, at finding myself in familiar conversation with my adored master, of whose existence I doubted, makes my own satisfaction inseparable from the fulfilment of my duty towards you. * * * *

The appearance of your works, published in the French language at Paris, coincides with this epoch; but as I had retired from Seville, with the profits of the business I had carried on there since the death of the duchess, and was living amidst relations and friends in the mountains of Castille, — I heard nothing of them until the passage of the French army through Salamanca to Portugal, in 1807, when your principles of civil and penal legislation were brought among other books for sale. To describe to you their effect upon me is impossible. Suffice it to say, that, in spite of the inconsistencies which I found in them, and which I have always attributed to your editor, I saw so much light, that I hailed, as a favourable prognostic for the prosperity of my country, the perfidy of the monster, who by irritating our national honour, set in motion our enthusiasm.

The delight I had formerly tasted in dispensing benefits was replaced by the anticipation of that which I should derive from seeing diffused through my country those principles which teach the science of governing, and of introducing useful reforms without injury to actual rights. In your works I saw the causes of the failure and of the evils of the French Revolution, which had excited our youthful attention. I began immediately to inform myself of the means, by which my country might be freed from the horrors which afflicted it. I found all made easy by the operation of your principles: but unfortunately they were unknown in Spain. Even now an acquaintance with them is by no means general. Yet, notwithstanding our inveterate prejudices on the one side, and notions *à la Française* on the other, a knowledge of them is extending itself; and, among the deputies elected for the next Cortes, I am convinced there are many initiated in your precious mysteries. I hope you will not find it inconvenient to transmit to your disciple, Nunez, the code which, I am assured by our amiable friend Bowring, you have been preparing ex-

* These funds are composed of bequests made for charitable purposes.

† A work entituled ESPIRITU DE BENTHAM SISTEMA DE LA CIENCIA SOCIAL. —Ideado por el Jurisconsulto Inglis *Jeremias Bentham* y puesto en ejecucion conforme a los principios del Autor original por el *Dr. D. Toribio Nuñez, Jurisconsulto Español*, Salamanca: Imprenta nueva: Por D. Bernardo Martin, 1820: 8vo, pages 140.

pressly for Spain. Do not doubt that the lights you have diffused will be of great service to us; that the number of your appreciators will be great among the new deputies; and that among them will be found many lawyers who revere you, and many learned physicians, who are imbued with your luminous system. * * * *

May heaven grant that my knowledge, corrected by your's, my integrity, and my prudence, may correspond with my good intentions; as, with your aid, I hope they will: and if, with this disposition, I implore whatever instruction my enlightened master can still give me, I am persuaded he will not refuse to assist with his advice his "beloved" disciple * * * *: and the nation to which he has the honour to belong, and to which such proofs of your affection have been already given, * * * *.

I must confess to you, that, if information does not rapidly spread, I fear we must wait a long time before we shall see the fruits it ought to produce; and certainly, until we do see them, we are in danger. I seek not to discourage you, nor to diminish your cheerfulness: God forbid!—Genius of good! you will not deny to us the instructions which we hope from your philanthropy: and we, on our part, will sedulously endeavour to propagate them. Your instructions will conduct us, in our search for those demonstrative proofs, by which all minds shall be brought into unison. You alone have realized the project of *Socrates*—you have justified the assertion of *Galileo*—you have made palpable the opinion of *Locke*—and have given consummation to the laudable commencements of *Beccaria*.

Adieu! may you live long for the benefit of the human race, and for the enjoyment of that glory, which it has been given to no other mortal to acquire!

IV. PORTUGAL.

1. *Minute of the Portuguese Cortes, ordering a translation to be made of all Mr. Bentham's works—Lisbon*, 13*th April* 1821.

Read by Secretary Freire a letter presented by Senhor Sepulveda, to whom it had been addressed by Senhor Carvalho, member of the regency of the kingdom,* along with the works of Jeremy Bentham, offered by their venerable author to the Portuguese nation: in which letter it was said, that the writer could not give a more authentic testimony of the value he set upon so generous and flattering an offering, than by accompanying it with a wish, that, in their practice, the cortes may take for their guidance the liberal doctrines of the principal and earliest constitutionalist of Europe.

Penetrated with those sentiments of esteem, that are so justly due to the illustrious Bentham—to that sage, by whose luminous ideas the whole civilized world has been enlightened, and to whom its free nations should erect a monument of gratitude, for the indefatigable zeal with which he has made application of those ideas to the service of the great cause of liberty and good government—the assembly has resolved, not only, that of this his offering honourable mention be made in their journals, but also that direction be given to the Regency to cause to be translated and printed all those his works, and that, by one of the secretaries of this august assembly, a letter be written to him, conveying to him the grateful acknowledgments of the cortes, accompanied with the intimation, that those his gifts were addressed to the assembly by one, and presented by another, of the persons who planned and took the lead in consummating those glorious measures, which gave commencement to our political regeneration: and that to the said Bentham be sent an authentic copy of the paragraph in our journals, in which expression is given to this resolution of the sovereign assembly. Hermano José Braamcamp de Sobral, Presidente—Joao Baptista Felgueiras, deputado, Secretario—Agostinho José Freire, deputado, Secretario.

(A true copy) Joaquim Guilherme da Costa Posser.

2. *Order of the Cortes to the Regency for that purpose—Lisbon*, 13*th April* 1821.

For the Conde de Sampaio.

Most illustrious and excellent Sir,—The General and Extraordinary Cortes of the Portuguese nation, desirous of giving a testimony of the particular satisfaction with which they have received the valuable present, made to them of his works, by the illustrious citizen of the world, Jeremy Bentham, and at the same time of contributing to the utmost of their power to the diffusion of the luminous and transcendently useful mass of information contained in those his so interesting productions,—have given orders for the transmission of them to the Regency of the kngdom, for the purpose of its causing a translation of them to be made, and printed at the national printing office, and with superior dispatch published. Your Excellency will accordingly make communication of this to the Regency, that due execution may be given to it.

God preserve your Excellency!

Palace of the Cortes, 13th April 1821.

(A true copy)
Joao Baptista Felgueiras.
Joaquim Guilherme da Costa Posser.

* This body was composed of four members: The Conde de Sampaio, President, and Messrs. Carvalho, de Sao Luis, et Soto Maior.

3. *Senhor José Baptista Felgueiras, one of the Deputies to, and Secretaries of, the Cortes, to Mr. Bentham, on conveying the above.— Lisbon, 24th April* 1821.

The General and Extraordinary Cortes of the Portuguese Nation, having received the obliging present of those your alike celebrated and interesting works, which have been addressed to them by one, and presented by another, of those well-deserving citizens, who have borne a distinguished part in the glorious achievement of the political regeneration of the Portuguese monarchy, — have resolved, that their grateful acknowledgments for so valuable an offering be made to you, and that they be accompanied by the copy of a minute in their journals, in which honourable mention thereof is made: and moreover, that those same works be translated and published, in such sort as to render manifest to all eyes the extraordinary regard and particular attention with which, by this sovereign assembly, acceptance has been given to those most important writings of the illustrious friend of man, and conspicuous advocate of the cause of nations. God preserve you, Sir!

Given at Lisbon, at the palace of the Cortes, this 24th day of April [1821.]

JOAO BAPTISTA FELGUEIRAS.

Mr. Jeremy Bentham.

On the Cover was the direction following: —" A o Sñr Jeremias Bentham, Londres, do Deputado Secretario das Cortes Geraes e Extraordinarias da Naçao Portugueze, Joao Baptista Felgueiras."

4. *Senhor Felgueiras, as above, to Mr. Bentham — Lisbon,* 22*d December* 1821. — *Received* 25*th January* 1822.

MOST ILLUSTRIOUS SIR, — In conformity to a *resolution*, passed by the *Cortes*, of the 26th November last, which I had the pleasure to communicate to you the 3d instant,* I have the honour to transmit to you a collection of the *journals of the Cortes*, as far as they are published, down to the present time, and in which are contained the Nos. down to No. 229: and they will be conveyed to you through the medium of the *Portuguese mission in London;* from whence also the *succeeding ones*, as they come out, will be transmitted to you, in pursuance of the *resolution of the Cortes.* I avail myself with much pleasure of the opportunity thus afforded me of expressing to you those sentiments of particular consideration and esteem, with which I am, Sir, your most respectful and affectionate venerator,

JOAO BAPTISTA FELGUEIRAS.

To the most illustrious Jeremy Bentham.
Lisbon, Palace of the Cortes,
22d December 1821.

On the outside cover, in another hand, was what follows: — " By the first conveyance; — On the second, the letter will be accompanied by a package, which will be sent by the first opportunity by sea."

17th April 1822.—In the list of these testimonials [No. 4,] mention is made of the special offer, on my part, to the Portuguese Cortes, to draw up a code of the description in question for that nation in particular: and of the acceptance given to that same offer by that same Cortes. In the preceding column is Mr. Secretary Felgueiras' letter to me of the 22d December, announcing a copy of the Portuguese journals, in which mention is made of a resolution of the Cortes, as having passed on the 26th November 1821, and been communicated to me, by a letter of his, dated the 3d of the then next ensuing month. Neither the collection of journals so announced, nor the letter by which it is announced, have ever yet reached me.† From the Portugese mission in London I have just received assurance, that neither that copy of the journals which was destined for me, nor another which was destined for that mission, were yet come to hand. The *Diario do Governo* is an official daily paper, by which, publication is given to state papers from the Cortes, as well as from the various subordinate offices. No. 284 of that paper, dated the 30th of November 1821, lies before me. In it is a translation of that same letter of mine. It is preceded by a notice, of which the following is a literal translation: — " The following paper is that which was referred to in the 241st sitting, as reported in the Diario of Tuesday last, No. 281." " Translation of the Letter which the venerable jurisconsult, Jeremy Bentham, addressed to the Cortes of Portugal, and of which an account was given by Mr. Deputy and Secretary Felgueiras, in the sitting of the 26th of November." This 26th is the same day, on which, according to his abovementioned letter, the resolution was passed, ordering the copy of the journals to be sent to me. It seems, therefore, that on this same day, on which the account was so given by him, the resolution, containing the *acceptance* of the offer, was passed: and that the order for the transmission of a copy of the journals, being a natural consequence, was included in it. Of this resolution, mention cannot but have been made in some No. of the Diario published between that same 26th November, and that No. which bears date on the 30th: but all the endeavours of my personal friends, to which (I am assured) have been added those of the Portuguese mission, to find here in London a copy of the No. thus desired, have been fruitless. At the end

* March 15th, this letter of the 3d of December has not yet come to hand.

† See No. 5. which was afterwards printed in Appendix.

of little less than three months, reckoning from the 25th of January 1822, in which Mr. Secretary's above-mentioned letter was received by me, irresistible circumstances forbid my delaying any longer the completing of the impression of this *proposal*, imperfect as is the state, in which these testimonials are thus brought to a close. JEREMY BENTHAM.

At the end of the translation of my letter, is an apology from the Cortes, for the interval that had elapsed, namely, between the 26th — the day on which the account had been given of it, as above, and the 30th — the day on which the translation was published in the *Diario*. The following is a literal translation: —

" *N. B.* — The above letter was not published on the day above designated, from the translations not having been finished in the office of the Cortes. The short-hand writer reported this delay, being officially directed to be prepared on the day announced."

Reference being made as above to the letter from the individual to the Cortes, and a conception of it, not quite correct in several particulars, having been conveyed by an English *re-translation* inserted in an English newspaper from the Portuguese,—the following copy of the original one may be thought, perhaps, to be not altogether out of place:—

Jeremy Bentham, London, to the Portuguese Cortes — 7th November 1821.

LETTER II.

Portuguese Cortes! Worthy rulers of a regenerated people! Worthy rulers, only because faithful servants!

Our correspondence is a singular one: the world's eye is upon it. It is an useful, it is an instructive one. I continue it.

Once already I have put your virtues to the test: nobly have they stood it. One trial still remains.

Once more must I bring to your view the never to be forgotten phrase — *greatest happiness of greatest number* — all-comprehensive and sole justifiable end of government. On a collection of works, by which the light of that all-commanding principle has, with more or less intensity, been shed on almost every part of the field of government, the seal of your approbation has been already stamped. All together, however, they form little more than an outline, nor that anything better than a rough and incomplete one. That outline, would you see it not only corrected and completed, but filled up? — filled up by a body of proposed law, conceived, and, as to all the most important parts of it, expressed, not in detail only, but *in terminis?* Speak the word, and you shall have it.

In the first place, a proposed penal code; in the next place, a proposed civil code; in the last place, a proposed constitutional code — this is what I have to offer you. In all of them, the circumstances in which Portugal stands will be kept steadily in view: these circumstances, so far as they can be learned from your judicial customs and existing ordinances, more particularly such ordinances as, in the intervening interval, shall have emanated from the regenerated legislature. To these will be added, whatever information, from any appropriately intelligent citizen of yours, I may be fortunate enough to have found within my reach. Where, owing to the fluctuating nature of the incidents, by which the demand for legislation is produced, arrangements proposed *in terminis* would be inapplicable, general directions or instructions will be substituted. Finance law will suggest to you examples.

Subjoined to this address is an appendix. In Part I. are *Testimonials:* in Part II. *Reasons for acceptance.* It is for your *table* this appendix: — not for your *ears.*

As to testimonials, those, which you yourselves have given me, are worth all others put together. Still it may be some satisfaction to you to see, that in your own opinion in favour of this your proffered servant, there is not anything, with which that of other countries, more particularly his own, seems likely to be in discordance. Of the reasons for acceptance, the matter (I have said) is for your *table.* Length, and respect for your time, have rendered the separation necessary. To your ears, however, I venture to submit the heads of it.

No: I will not, as yet, seek to burthen you with it. It is, however, ready, and the next post shall bring it to you.

Legislators! such is the mite I offer to cast into your treasury. But before the cast, or the mite itself, can have been made, something on your part must have been done — something to this effect you must have said to me: " Friend of man, send in these works of yours; they shall be laid upon our table. Rejection *in toto* — consideration in detail — sanctionment, of one part or of another part — at one time, at another time, or at no time — all this will depend, for it cannot but depend, upon the judgment formed by us, as to what is most conducive to the greatest happiness of the greatest number of the people under our charge. For thus much, however, the Cortes pledges itself, in so far as it is in its power to pledge itself: each of these your proposed codes shall, on its arrival, by the earliest opportunity, be taken for the subject of our deliberations."

" Well but," says somebody, " this present of his — why all this talk about it? why not send it to us at once?"

Legislators! it is *not* made: and because it is not, therefore it is that I thus offer it. — Without acceptance, such as that I have

spoken of, I am not sure that it ever can be made: what I am sure of, is — that it cannot be made either so promptly or so well. At the age of three-and-seventy, the current of the blood runs slow: something is wanting, something from without to quicken it.

One short word more. Let there be no mistake. *Acceptance* is what I call for; *acceptance* — nothing more: no such thing as *preference*, much less *exclusive* preference. As to rival works, not to exclude, but to multiply them, would be my wish: rival works, from any hands, but more particularly from native ones. Of the sincerity of this wish, proof more than in abundance is already in your hands. It may be seen at length in one of those former works, by the acceptance of which your character has already shed its lustre on the untitled and title-scorning name of JEREMY BENTHAM.

*** For the words *untitled* and *title-scorning*, the words in the Portuguese are — *simples e humilde*. The accordance (it may be seen) is not, in this instance, altogether a perfect one.

5. *The Portuguese Cortes to Jeremy Bentham.* — Received through the Portuguese Mission at London, 22d April 1822, since the impression of the above. Acceptance given to his offer of an all-comprehensive Code: Acts and Journals of the Cortes to be accordingly sent to him successively.

The General and Extraordinary Cortes of the Portuguese Nation, — presentation being made to them, in the sittings of the 26th of November last, of a letter addressed to them by you, making offer of, and requesting acceptance for, three proposed codes — one civil, another penal, and another constitutional, accommodated, all of them, to the circumstances of Portugal; adding the mention of an appendix, intended to be sent by the then next conveyance, — have *resolved* that, in an act of the Congress, mention be made of that highly valued offer, which the Cortes have accepted with particular pleasure, inasmuch as the well-known lights and experience of so celebrated a jurisconsult, and illustrious friend of mankind, will thus come in aid of an undertaking of our own, in which that same field is comprehended: as also, that a translation of the afore-mentioned letter be published in the *daily paper of the government*, and with the original in front of it in the *Journal of the Cortes*: and that transmission be made to you of a collection of the acts and journals of the Cortes, as also of the several continuations thereof as they come out. All which, by order of the Cortes, I have the pleasure of communicating to you for your information. God preserve you, Sir!

JOAO BAPTISTA FELGUEIRAS.

Lisbon, Palace of the Cortes,
3d December 1821.

6. *The Portuguese Cortes to Jeremy Bentham.* — Received through the Portuguese Mission at London, 22d April 1822. Translation ordered of his Letters to Count Toreno, on the proposed Spanish Penal Code.

MOST ILLUSTRIOUS SIR, — The General and Extraordinary Cortes of the Portuguese Nation, to which I gave an account of your letter of the 30th of January of the present year, have heard with pleasure the obliging expressions which it contains, and received with thankfulness the present sent by you of a work intituled "*Letter to Count Toreno, on the proposed Penal Code, delivered in by the Legislative Committee of the Spanish Cortes:*" and they have resolved that, on that occasion, transmission shall for the *second time* be made to you, of the letter of the 3d of December of the last year, and that to the minister of foreign affairs orders be given to take the necessary arrangements, in such sort that this correspondence, as also the successive continuations of the journals of the Cortes, shall, with all promptitude and certainty, be transmitted to you through the Portuguese legation at London, in conformity to the resolution of the 22d of December 1821. All which, by order of the Cortes, I have the pleasure to communicate to you for your information. God preserve you, Sir!

JOAO BAPTISTA FELGUEIRAS.

Lisbon, Palace of the Cortes,
22d March 1822.

V. ITALY.

Opinion of the Italian Liberals, in relation to Mr. Bentham, as delivered in the Antologia, a Periodical work published at Florence, 1822.—(N. B. From any constituted authorities in that quarter, nothing of this sort (it is evident) can be expected.)

Mr. Dumont to Mr. Bentham. (Extract.)

(TRANSLATION.)

Geneva, 15th January 1822.

THERE appears at Florence a miscellany (Antologia,) in which, from the work on *evidence*, is a translation of a chapter on *publicity*, which I had given to the *Annales de Legislation*, published at *Geneva*. It is not altogether without surprise that I can see a government, subject to the immediate influence of Austria, thus permitting the appearance of an article such as the one in question, accompanied as it is with the excellent notes of Rossi, whose name is so far from being in good political odour, either in Milan or in Rome. The work on *evidence* is there announced and spoken of in these terms: — " Gli amici dell' umanitá desiravano di veder trattata la materia delle institutioni giudi-

ciarie, da quel genio veramente superiore della età nostra, dal Signor *Jer. Bentham*, chiamato a ragione il *Bacone* della scienzia legislativa. I suoi trattati di legislazione civile e penale, e le altre opere di questo sublime pensatore, presentavano finora una lacuna su questo articolo, che niuno meglio di lui avrebbe potuto riempire."

"The friends of mankind had been desirous of seeing the subject of judiciary institutions treated of by that truly superior genius of our age, Mr. Jeremy Bentham, styled with such good reason the *Bacon* of the legislative branch of science. His treatises on legislation, civil and penal, and the other works of that sublime mind, have till now been presenting on this field a gap, which no one could have been better qualified to fill up."

After that, comes a biographical article, tolerably correct, taken from the French work, "*Biography of men now living*."

To account for the allowance, given by the censorship in an *Italian metropolis*, to the publication of such an article, it is necessary you should understand, that *Tuscany* has been fortunate enough to have preserved that *publicity in judicial proceedings*, for which it had been indebted to the influence of the French government.

The *Newton of Legislation* was an appellation, bestowed upon the same author, in an Italian publication, which appeared at Milan a few years ago, but was soon suppressed: the reference cannot at this moment be recovered. In the physical world, *Bacon* cleared away the rubbish of antiquity: *Newton* built.

VI. FRANCE.

☞ See, under this head, the list of these testimonials.

VII. ANGLO-AMERICAN UNITED STATES.

1. *Governor Plumer's Letter to Mr. Bentham, announcing the intended communication of his offer to the Legislature of New Hampshire.*

New Hampshire, Epping, October 2, 1817.

SIR,—A few days since I received a note from my much esteemed friend the Hon. Mr. Adams, now Secretary of State, accompanied with your "Panopticon," and "Papers relating to Codification;" in the last of which, with a generosity truly honourable not only to you as an individual, but to man in general, you gratuitously propose to devote your time and talents in drawing a code of laws for any State who shall require it, both civil and criminal, to supersede the *unwritten law*.

I have long considered such a work as a great *desideratum* in legislation—and that it would, in a great measure, not only correct the numerous errors and gross absurdities, but destroy the great *uncertainty* of what is called the *common law*, and render our government, more emphatically, what it has with so little propriety boasted of—*a government not of men but of laws*. How far it is practicable to establish such a system in New Hampshire, I cannot determine. We have not only a host of prejudices to encounter, but the interests of a body of lawyers, many of whom *here, as in all other* countries, dread *reform*, fearing it would diminish their individual profits. Public good is too often sacrificed to private interest. When will the individual learn, that his private interest is most effectually promoted, by permanently securing that of the public?

The Legislature of this State usually hold annually but one short session, and that in June. At their next session, I will, if I live, communicate your "Papers" to our legislature; and I hope they will receive that candid consideration which their high merit demands.

My continuance in office depends on annual elections—and the authority vested in me is restricted. I have no power, as chief magistrate of the State, to request you to draw a code of laws for this State; but, whether I continue in office, or return to private life, whatever communications you may hereafter please to make to me on that subject, I will find means of transmitting to our legislature; and will do everything in my power to effect a thorough investigation of them.

Persevere, my dear Sir, in the great and important work in which you are so disinterestedly engaged. The world, if not now, at some future period, will profit by your labours—and though immediate success may not follow, you yourself will enjoy the noble consciousness of having faithfully served the best interests of society—and a rational prospect that sound principles will eventually prevail.

Should you wish a copy of the laws of New Hampshire, if you will intimate it to me, I will take effectual care to forward them to you.

Be pleased to accept copies of my three last public communications to our legislature—and an address to the clergy of New England, which I wrote during our late war with your nation. These small pamphlets I inclose under the same envelope with this letter.

Accept my grateful acknowledgments for your communications—and believe me to be, with much respect and esteem, Sir, your most obedient humble servant,

WILLIAM PLUMER.

Jeremy Bentham, Esq. Queen-Square Place, Westminster, London, Kingdom of Great Britain.

2. *Extract from a private Letter to Mr. Bentham, from a distinguished Functionary in the United States, Member of the House of Representatives in his State, and Delegate therefrom to Congress, informing him, how, by the Governor of New Hampshire, Mr. Bentham's above-mentioned offer had been recommended to the consideration of the House of Representatives; and stating the influence of the fraternity of Lawyers as the cause of the reluctance in the several States as to the acceptance of any such offer: stating, moreover, the adoption which at that time had been given to divers of Mr. Bentham's ideas in several of the States.* — (*N. B.* Those of Mr. Bentham's works which were edited by Mr. Dumont, being in French, were not at that time known to the writer, and had scarcely found their way into the United States. October 2, 1818.)

THE letter, which the governor of New Hampshire wrote you about a year since, having been published in England, was copied into the newspapers of that state, a short time before the meeting of the legislature, accompanied with many very foolish and absurd remarks, in which your character and designs were ridiculed, and your proposed system of laws abused and misrepresented, in a style and manner not much unlike that which a little earlier appeared in the *Quarterly Review* of your "*Plan of Parliamentary Reform.*" It is hardly necessary to add, that the governor came in for a full share of the censure heaped upon you for the approbation which his letter contained of your proposed work. You will perceive, however, from his message at the commencement of the session, that he was not prevented by this circumstance from bringing your proposal fairly before the legislature.

To give it a better chance of success, a son of his, who is a member, at the same time caused the greater part of an article on this subject, in a late Edinburgh Review, to be republished in the leading republican newspaper of that state, and to be put into the hands of the members of the legislature. When, however, that part of the message was taken up in the house of representatives, on report of a committee it appeared, that, except that gentleman, all the lawyers of both parties (twelve or fifteen, the most influential members of the house) were decidedly opposed to passing any other resolve on the subject than a general one — that it was inexpedient to accept your proposal.

Of the members of the bar who were thus unfriendly to this design, some were no doubt influenced by a belief (not unnatural with those who have made the common law their study during life, and who for twenty years have heard and repeated its eulogium, as the perfection of human reason, without once suspecting that it admitted of any improvement) that little or no alteration was necessary, and least of all, so entire and radical a change as that proposed by you. To those somewhat advanced in years, the thought of commencing a new system, and of becoming learners when they had been long accustomed to teach, was an idea certainly not very pleasant, and one which they did not choose to adopt, for the uncertain prospect which it presented to their minds of some remote and doubtful advantage to the community. Others were perhaps swayed by the persuasion, that the new system would prove *injurious to the profession*, by rendering the law more *clear* and *explicit*, and thus diminishing the *profits* which are at present derived from its *uncertainty* and *obscurity*. From these, or other motives, they pronounced the project visionary, impracticable, unnecessary — unworthy of attention, because presented by a person who must be ignorant of our situation, and unacquainted with our wants; — with many other similar objections, all addressed to the ignorance, the prejudices, and the pride, of men whose sober judgment was prevented, by every artifice, from applying itself to this important subject with candour and impartiality. While, therefore, those who were supposed to know the most in relation to our legal establishments and the means of their improvement, were all opposed to the introduction of a new system, and those who were willing to give it a fair trial were in general but little acquainted with its merits, — you will readily perceive the disadvantages under which it laboured. It was not indeed difficult, in my opinion at least, to return satisfactory answers to all these objections. But you have, I think, yourself remarked, that it is not always by the most rational arguments that the strongest impression is made. The motives, therefore, which I have mentioned, with others of a like nature, added to the novelty of the subject and the pressure of other business, induced the house finally to accept the report of their committee, which was, that the further consideration of this subject be postponed to the next session of the legislature, which is in June 1819. Your proposition was therefore, strictly speaking, neither adopted nor rejected, but postponed. It will next June be reported among the unfinished business of the last session. Whether anything further will be at that time effected, I am unable to say, but I am afraid there is very little hopes of any favourable result.

I have taken some pains to ascertain whether your proposal has met with a more just reception in any other of the United States; but I am inclined to think that it has not. I do not find it mentioned in the speeches or

messages of any of the governors to the several state legislatures which I have seen.

Under these circumstances, permit me, with deference, to suggest the following views for your consideration :—

What may be called the philosophy of law — that is, the general principles of civil and criminal jurisprudence, founded on the broad basis of *utility*, and adapted to the wants of a civilized and enlightened people, engaged in the ordinary pursuits of agriculture, manufactures, and commerce — has never yet, so far as I am acquainted with books, been justly and correctly treated, in all its bearings, and in the amplitude of its details, by any author who has written upon the subject of law. We have indeed systems of the Roman law, of the Feudal law, and of the English law, and other national systems: and Montesquieu has given us " *L'Esprit* des Loix"— an excellent title, and in truth an excellent book, but not exactly such a one as I wish to see written. We still want a work, unfolding the true principles of law in the abstract, as derived from the nature of man, and the necessary structure of society — the *beau-ideal* of law, such as it never yet has been in any state, such as it never will be, but such as every state ought, as near as possible, in its own case, to make it. We have now no general standard of legal perfection, in all its various branches — no model of acknowledged excellence, with which to compare our different systems. You, Sir, are eminently qualified to provide such a model, to raise such a standard, to mark out the boundaries, and prescribe the form of a truly wise and enlightened system of jurisprudence. You have expended a vast fund of original thought, and devoted years of patient examination to every part of this extensive subject. Permit me, then, to request, that you would enrich the public with the important results of these laborious studies.

Two modes occur to me as the only ones in which this service could be rendered to mankind. The first is — by the publication of a work in the didactic form, in which the general principles of law should be unfolded and explained — as, for example, those of political economy are, in Smith's Wealth of Nations. Perhaps this has already been done in your " Introduction to the Principles of Morals and Legislation," or in the works published from your papers by M. Dumont. I have sent to London for these books, but *have not yet obtained them.*

The second mode of communicating to the public the result of your labours in jurisprudence — a measure not inconsistent with the former — would be to publish a complete code of laws drawn up *in terminis :* — a *Pannomion* — founded upon correct principles, and extending, if such a thing be possible, so as to embrace the whole mass of human transactions, cognizable by human laws. In such a work you would be at no pains to accommodate your enactments to what *is* already law in Europe or in America, — but to what *ought to be* law in the most improved state of society — to the true principles of *general utility*, on which alone all just legislation rests. Yet, supposing such a work once completed, and further, that each of its provisions was in itself the best that could possibly be imagined, it would still be doubtful, whether any state or nation could be found to whose circumstances it would exactly apply: and it is, I think, very certain — such is the temper of deliberative assemblies — that there is no state which would at once, and by a single act, adopt all its provisions. But, if executed with half the ability which you would bring to the undertaking, an immense advantage would result to mankind from the publication of such a work. A standard would thenceforth exist, by which we in the United States, at least, might estimate the true value of our legal systems, improve them where they admitted of improvement, reject such parts as are injurious or imperfect, and incorporate such new principles, or new applications of old principles, as are suited to our situation; and in a word, perfect our legal, as we have endeavoured to do our political establishments, by calling to our aid the wisdom and the philosophy, the speculations and the experience, of all ages and of all countries. The utility of such a work would be acknowledged in every part of the civilized world, because in every country the improvement of the law is an object of primary and permanent importance. Instead, then, of waiting for the previous sanction of some legislative body, if you were to publish your proposed code of laws, as soon as it is completed, or such parts of it as admit of being separately exhibited, there is very little doubt, that the beneficial effects which you anticipate from its entire adoption would in a very considerable degree be ultimately obtained.

The influence of your writings has already been extensively felt in the United States. Your work on usury has passed through several editions in this country; and its principles begin to be pretty generally adopted by men of enlarged views and liberal minds amongst us. In the constitution of the new State of *Mississippi*, which was formed in 1817, it is provided that the legislature of that state shall " pass no law impairing the obligation of contracts, prior to 1821, on account of the rate of interest, fairly agreed on in writing, between the contracting parties, for a *bona fide* loan of money; but they shall have power to regulate the rate of interest, where no special contract exists in relation thereto." This provision of the constitution of Mississippi, being limited to four years, was no doubt

intended as an experiment; but, having once felt the advantages of unrestrained liberty, and a free competition in this branch of trade, there is little danger of a return to the absurd restrictions which prevail in other States of the Union.

In the *Alabama* territory, an act has this year been passed, repealing all the laws against usury, and allowing the parties in all cases to fix their own rate of interest.

A similar law, introduced by Mr. Hayes in the Virginia house of delegates, was rejected by a majority of six or eight votes only, out of two or three hundred.

In New Hampshire, the same subject was agitated in the house of representatives, at their last session; but they are not yet prepared to renounce their old prejudices.

On the subject of state prisons, or penitentiaries, many of your suggestions have also been reduced to practice, though no building has, I believe, been erected on the plan of the panopticon in any of the states. The *contract-principle*, so strongly recommended by you, has been adopted, with great advantage, though not to its full extent, in some of our state prisons.*

*** For *other* testimonials from the United States, also from *Russia* and *Poland*, see *List of Testimonials* in Contents, Nos. X. XI. and XII.

VIII. GREECE.

1. *Prince Alexander Mavrocordato, Secretary to the Provisional Government of Greece, to Jeremy Bentham; introducing* No. 2.

Monsieur, — Je m'estime heureux d'être chargé de vous faire connaître les sentimens de gratitude et de reconnaissance de mon gouvernement, pour les observations que vous nous avez envoyées sur notre loi organique. Il était digne d'un ami de l'humanité, d'un des plus respectables philosophes de notre temps, d'apporter l'attention de son génie au bonheur d'une nation, en qui quatre cents ans d'esclavage et de misère, n'avaient pû parvenir à effacer le sentiment de ses droits, et de ses devoirs.

Continuez, donc, Monsieur, de nous éclairer par vos conseils, de nous diriger par cette raison superieure, qui immortalise vos ouvrages, et que votre suffrage, cité en faveur de notre cause, en devienne le plus ferme appui, comme il est déjà le garant le plus certain, de notre triomphe.

Veuillez bien agréer, Monsieur, l'assurance de ma parfaite estime, et celle de la haute considération avec laquelle j'ai l'honneur d'être, Monsieur, votre très humble et très obéissant serviteur,

(Signé) A. Mavrocordato.

Tripolitza, Juin 22 (Juillet 4) 1823.

A Mons. M. Jeremy Bentham,
Jurisconsulte, &c. &c.

(translation.)

Sir,—I think myself happy in being charged to communicate to you the sentiments of gratitude and thankfulness of my government, for the observations you have sent to us on our fundamental law. It was worthy of a friend of humanity, of one of the most respectable philosophers of our time, to direct the attention of his genius to the well-being of a nation, in which four centuries of slavery and misery had not been able to efface the sentiments of its rights and its duties.

Continue, then, Sir, to enlighten us by your counsels, and to guide us by that superior intelligence which immortalizes your works, and let your good opinion, when quoted in favour of our cause, become the firmest basis, as it is already the surest guarantee, of our triumph.

And accept, Sir, the assurance of the high esteem and consideration with which I have the honour to be, &c. &c. &c.

(Signed) A. Mavrocordato.

Tripolitza, June 22 (July 4) 1823.

To Mr. Jeremy Bentham,
Jurisconsult, &c. &c.

2. Προσωρινὴ Διοίκησις τῆς Ἑλλάδος.— Ὁ Πρόεδρος τοῦ Βουλευτικοῦ πρὸς τὸν Κύριον Ἰερεμίαν Βενθάμ.

Ὁ φιλελληνικώτατος Κύριος Βλακιαῖρος, καὶ φίλτατος συμπολίτης μας Κύριος A. Λουριώτης ἐπρόσφεραν, ἐξ ὀνόματός σας, εἰς τὴν Βουλὴν τῆς Ἐλευθέρας Ἑλλάδος, ἐπὶ κοινῆς Συνεδριάσεως, τὰς εἰς τὸ Πολίτευμά μας παρατηρήσεις Σας· καὶ ἡ Βουλὴ τὰς ἐνεπιστεύθη εὐθὺς εἰς Ἄνδρα, εἰδήμονα τῆς Ἀγγλικῆς Γλώσσης, διὰ νὰ τὰς ἐξελληνίσῃ ὅσον τάχιον εἰς κοινὴν χρῆσιν καὶ ὠφέλειαν.

Ἡ Ἑλλὰς ὀφείλει νὰ ὁμολογήσῃ εἰλικρινῶς καὶ παῤῥησίᾳ πόσον ἐχάρη καὶ ἐμψυχώθη, βλέπουσα τὸν Νομοδιδάσκαλον τοῦ δεκάτου ἐννάτου Αἰῶνος νὰ διακόψῃ πρὸς καιρὸν τὰς σοφάς του ἐργασίας, ἀφορώσας τὴν κοινὴν εὐδαιμονιάν τῆς Εὐρώπης ὅλης,

* The following paper exhibits the proportion, between the number of *lawyers*, and the number of men of all other professions, in the *Congress* of the Anglo-American United States, anno 1820. It is an exact reprint of a slip of printed paper, sent without explanation, to Mr. Bentham, by a diplomatic functionary:—

"CONGRESSIONAL 'COMPOSITION.'

"*A Statement of the Professions of the Members of the present Congress, made out by a Member.*

"*In Senate.* — 33 lawyers; 1 physician; 9 planters and farmers; and 1 mechanic.

"*In House of Representatives.*—100 lawyers; 13 physicians; 62 planters and farmers: 9 merchants; and 2 mechanics.

"188 Representatives, 2 Delegates, 44 Senators. Whole number of Members of Congress, 233. From New England and New York, in the house of representatives, 40 lawyers. Whole number of representatives from do. 68: deduct lawyers, 40; other professions, 28."—(*Western Journal.*)

διὰ νὰ προσηλώσῃ τὴν προσοχήν του καὶ τοὺς κόπους του εἰς μόνην τὴν εὐδαιμονίαν τοῦ Ἑλληνικοῦ Ἔθνους.

Ἡ Βουλὴ προλαμβάνει, καὶ δημοσίως Σᾶς κοινοποιεῖ δἰ ἐμοῦ τὴν εἰλικρινῆ της χαρὰν καὶ βαθεῖάν της περὶ τούτου εὐγνωμοσύνην, βέβαιος οὖσα, ὅτι ἔχουσα τοιοῦτον Συνεργάτην, ὅστις καὶ τὰς χρείας γνωρίζει τοῦ ἀνεγειρομένου Ἔθνους ἀπὸ τὴν πολυχρόνιόν του πτῶσιν, καὶ ἱκανώτατος εἶναι νὰ εὕρῃ τὴν ἀνήκουσαν θεραπείαν, θέλει φθάσει καὶ συντομώτερον καὶ εὐτυχέστερον εἰς τὸ μέγα ἔργον τῆς ἠθικῆς του ἀναπλάσεως, ὅθεν κρέμαται ἡ ἀληθής του καὶ μόνιμος δόξα.

Ἡ Βουλὴ, ἡ ὁποία νομίζει ὄχι μικρὸν εὐτύχημα τῆς Ἑλλάδος νὰ ἀναγεννηθῇ εἰς τὰς ἡμέρας, καθ' ἃς ζῆτε, πεποίθησιν σταθερὰν ἔχει, ὅτι ὠφελουμένη ἀπὸ τὰς τωρινάς Σας παρατηρήσεις, δὲν θέλει καὶ εἰς τὸ ἑξῆς στερεῖται τῶν σοφῶν Σας ὁδηγιῶν, ὥστε καὶ ἀπὸ τὰς μετὰ ταῦτα βοηθουμένη, νὰ ἀσφαλίσῃ τὴν ἀναγέννησιν τῆς φιλτάτης Σας Ἑλλάδος, μὲ τὴν ἀκαταμάχητον εὐνομίαν, τὸ μόνον ἀσφαλὲς προπύργιον τῆς ἐθνικῆς της εὐδαιμονίας.

Αὐτὰ Σᾶς κοινολογῶ, Κύριε, ἐκ μέρους ὅλης τῆς Ἐθνικῆς Βουλῆς· ὅσον τὸ κατ' ἐμὲ, εὐτυχὴς εἶμαι, ὅτι ἔλαβον αὐτὴν τὴν ἔντιμον Διαταγὴν νὰ κοινοποιήσω τὰ τοιαῦτα εἰς Ἄνδρα, πρὸς τὸν ὁποῖον προσφέρω ἰδιαιτέρως τὸ βαθὺ σέβας, καὶ τὴν ἀνήκουσαν ὑπόκλισιν.

Ὁ Πρόεδρος,
Ἰωάννης Ὀρλάνδος.
Ὁ Πρῶτος Γραμματεὺς τοῦ Βουλευτικοῦ,
Ἰωάννης Σκανδαλίδης.*

Τῇ ιβ' Μαΐου τοῦ αωκγ'
Ἐν Τριπολιτζᾷ.

(TRANSLATION.)

2. *Provisional Government of Greece. The President of the Legislative Council to Mr. Jeremy Bentham.*

Mr. Blaquiere, that distinguished friend of the Greeks, in conjunction with our beloved fellow countryman, Mr. A. Luriottis, has delivered, in your name, to the Legislative Council of Liberated Greece, in general convocation assembled, your observations on the subject of our form of government: the council has thereupon committed them to the care of a person skilled in the English language, with directions to translate them, with as much dispatch as may be, into Greek, for the common use and benefit of the nation.

It is a duty incumbent on that nation to make an open and sincere declaration of those sentiments of affection and delight with which she beholds the preceptor of the nineteenth century in the school of legislation, suspending the course of those labours, which were embracing the general happiness of Europe, for the purpose of devoting them, in a more particular manner, to the service of Greece.

The Council has been the first to feel, and takes this public mode of communicating to you, through me, its heartfelt delight and profound gratitude; confident that, with such a coadjutor, whose comprehension of the exigencies of a nation raising herself out of a long-continued depression, and of the most appropriate mode of providing for them, is so consummate, she will make her advances with proportionably greater speed and better fortune, in the great work of that moral regeneration, upon which her truest and most permanent glory depends.

The Council, in whose estimation it is matter of no slight happiness to Greece, that it is in your lifetime this great work is in progress, cherishes the persuasion, that after having thus been already favoured with your well-timed observations, it will not for the future have to lament the want of your fostering guidance; so that henceforward, by your assistance, it may secure the revival of your beloved Greece, by an unsubvertible good government — the only inexpugnable bulwark of national felicity.

This, Sir, is what, by these presents, I communicate to you, on the part of the whole National Council. On my own part, I regard it as matter of good fortune to myself to have received so honourable a commission as that of making a communication of this sort, to a man for whom I personally feel such deep respect, and all becoming reverence.

The President,
JOHN ORLANDO.
First Scribe of the Council,
JOHN SCANDALIDES.

Tripolitza, May 12, 1823.

3. *Prince Alexander Mavrocordato, Secretary to the Provisional Government of Greece, to Jeremy Bentham: introducing the two Greek Envoys.*

MONSIEUR, — Je suis particulièrement chargé par mon gouvernement de vous recommander la mission qui, chargée d'éclairer la nation Anglaise, et par elle toute l'Europe, sur le véritable état des choses en Grèce, et de détruire les calomnies que nos ennemis n'ont que trop répandues contre les principes et le but de notre entreprise, a besoin de vos sages conseils, et de l'appui de vos suffrages en faveur de notre cause, afin d'arriver à son but.

Persuadé de la noble et généreuse assistance que vous voudrez bien accorder, par l'influence de vos talens, à une cause que vous avez déjà si victorieusement défendue, je vous prie, Monsieur, d'agréer d'avance la gratitude du gouvernement provisoire et de la nation Grecque, ainsi que celle de mon estime particulière, et de ma plus haute considération.

(Signé) A. MAVROCORDATO.

Tripolitza, le 24 Juin, 1823, V. S.

A Mons. M. Jeremy Bentham,
Jurisconsulte, &c. &c.

* He was, in Corfu, Mr. Hamilton Browne's master for the Greek language.

(TRANSLATION.)

Sir, — I am especially charged by my government to recommend to you the mission which, being ordered to instruct the English nation, and through it, the whole of Europe, as to the true situation of things in Greece, and thus to destroy the calumnies which our enemies have but too widely spread against the principles and the object of our struggle, will have need of your judicious counsels, and the support of your suffrages in favour of our cause, in order that we may reach the [desired] end.

Anticipating that generous assistance which you will kindly grant by the influence of your talents on behalf of a cause you have so victoriously defended, I pray you, Sir, to accept beforehand the gratitude of the Provisional Government of the Greek nation, as well as that of my individual esteem and highest consideration.

(Signed) A. Mavrocordato.

Tripolitza, June 24 (July 4,) 1823.

To Mr. Jeremy Bentham,
Jurisconsult, &c. &c.

Jeremy Bentham to the Greek Provisional Government — Letter 1. *In answer to the foregoing.*

Legislators of regenerated Greece!—Whether for the sort of encouragement with which you have been pleased to honour me, any such praise is due as that of discernment, it belongs to the world at large, not to him who is the object of it, to pronounce. Of the magnanimity manifested by an address of this complexion to a man whose position is so completely destitute of everything which could render him an object of such notice to ordinary minds — to a man from whom no service can possibly have been looked for in any shape but that in which a small particle of it has already been so richly remunerated, — there can be but one opinion: such is the honour your body has conferred on itself, and by nothing more that I could say, could any addition be made to it.

As to me, to the illustration conferred on me by such a letter, has been added the most singular one of its being delivered by the hand of the very person, by whose signature, in his character of president of your body, it was authenticated; a man whose warrant I have already for calling him by the endearing name of son. "Orlando," said I to him t'other day in French, "thus, and thus only, can I address you. Monsieur Orlando?* My lips close against the words. Monsieur Solon? Monsieur Pericles? Monsieur Epaminondas? Monsieur Philopœmen? Who ever heard any such barbarisms?" "Let me but call you *father*," was the answer, "and call me what you please."

Κύριος Bentham, indeed? Legislators! To others, if you please: to me, as you love me, no more Κύριος. Common as the word is, there is a glare of legitimacy upon it that hurts my eyes. Give it to my imperial correspondent; give it to the Αὐτοκράτωρ — the modern Alexander; from him, peradventure, you may have a note of thanks for it: but, in this case, or you may lose your labour, it should be in the superlative — sublimated into Κυριώτατος.

Oh yes! when you speak to me, add ἡμέτερος to it, — or, as you now say, μας. This I have already merited: this, if from you, would be my most honourable title. If to do so be in the power of labour, no hired servant ever merited it better, unless by the pleasure so intimately combined with it, the merit, as in the eyes of certain casuists, would be annihilated. Seventy years ago, I devoted myself to the service of mankind: and now, at length — for by you am I enabled — now, at length, nor yet altogether without prospect of success, do I behold myself occupied in the performance of that vow.

This will be delivered to you by the worthy comrade of our Luriottis, Edward Blaquiere, by whom his title of φιλελληνικώτατος, as given to him in yours to me, continues to be so well merited.

Farewell, legislators! May success ever attend your labours in the council, as it has done those of your heroes in the field. Should any modern Xerxes presume to offer obstruction to them, may his fate be that of the ancient one. Already, in thus writing to you, I have perhaps written too much. I resume the pen which yours found me writing with for you. What remains is — to subscribe myself, and with somewhat more truth than is common in such subscriptions, your δοῦλος.

(Signed) Jeremy Bentham.

Queen's-Square Place, Westminster,
London, February 13, 1824.

To the Sovereign Legislative Council of Greece.

4. Προσωρινὴ Διοίκησις τῆς Ἑλλάδος.—Ἡ Βουλὴ τῶν Ἑλλήνων πρὸς τὸν Φιλέλληνα Κύριον Ἱερεμίαν Βένθαμον. — Περίοδος β', ἀριθ. 1122.

Ἂν ἡ λαμπρὰ καὶ Εὐδαίμων Ἀγγλία σεμνύνεται διότι σὲ ἔχει Πολίτην, ἡ Μητέρα τοῦ Λυκούργου καὶ Σόλωνος, ἡ δυστυχὴς Ἑλλὰς χαίρει, διότι εὐτύχησεν νὰ ἀπολαύσῃ εἰς τὴν ἀναγέννησίν της τὸν Σοφώτατον καὶ φιλανθρωπότατον Νομοδιδάσκαλον.

Τὰ τέκνα τῆς φίλης Ἑλλάδος ἀνθολογοῦντα ἀπὸ τὸν Πολυανθῆ λειμῶνα τῶν ποιημάτων σου, ἀναπτεροῦνται πάντοτε εἰς τὸ ὕψος, τὸ ὁποῖον νὰ φθάσωσιν ἀκόμη δὲν δύνανται. τὰ Μέλη τοῦ βουλευτικοῦ ἀναπτύσσοντα τὰς δυνάμεις των, καὶ κατὰ τοὺς ἐπιστημονικούς σου κανόνας, συντελοῦσιν εἰς τὴν βελτίωσιν τοῦ πολιτικοῦ τῆς Ἑλλάδος Συστήματος.

* At this time, all that in England was known of that gentleman was, that in his own country he had filled the highest situations of public trusts.

Χαῖρε λοιπὸν φίλε τῆς Ἑλλάδος! ἔχεις ἀξίαν ἀμοιβὴν τῆς Ἀρετῆς σου, τὴν ὁποίαν ἀπολαμβάνεις ἡδονὴν διὰ τὴν εὐδαιμονίαν τῶν φίλων σου. Χαῖρε! καὶ

"Βάλλ' οὕτως αἴκεν τι φόως Δαναοῖσι γένηαι."

Ὁ Ἀντιπρόεδρος Θεοδώρητος.

Ὁ Πρῶτος Γραμματεὺς τοῦ βουλευτικοῦ Ἰω. Σκανδαλίδης.

Ἐν Ναυπλίῳ,
τῇ 11 Αὐγούστου, 1824.

(TRANSLATION.)

4. *Provisional Government of Greece. The Greek Senate to Mr. Jeremiah Bentham, Philhellenist.* — Letter 2. *Noticing his Letter* 1. — Period 2d, No. 1122.

If splendid and happy England is proud of having you for a citizen, — unhappy Greece, the mother of Lycurgus and Solon, rejoices that she has had the good fortune to obtain in her regeneration a most able and humane law-giver.

The children of friendly Greece, gathering flowers from the flowery meadow of your works, are continually soaring to a height which they have not as yet been able to attain. The members of the senate are developing their powers; and, according to your scientific rules, are co-operating in the amendment of the political system of Greece.

Hail, then, friend of Greece! you possess a reward worthy of your virtue, in the pleasure which you receive from the happiness of your friends. Farewell, and

"Strike thus, that you may procure some salvation for the Greeks." — *Homer*, 282.

THEODORET, *The Vice-President.*
JO. SCANDALIDES, *Chief Secretary of the Senate.*

Napoli, August 11, 1824.

5. *Provisional Government of Greece. The Secretary-General to J. Bentham, Esq.*— Period 2d, No. 254.

It is with great satisfaction suffering Greece has observed, that, while she took up arms to assert the rights of her political existence, the enemies of the public good, and the friends of their own narrow interests alone, have, with all their sophisticated attempts, not been able to attach the slightest blame to the sanctity of her cause; but, on the contrary, their intrigues have caused the veil to be withdrawn which has hitherto concealed the truth from the eyes of the many.

She cannot, however, refrain from expressing her thanks to those persons whose feelings of humanity have prompted them, from the beginning, to interest themselves in her defence of those indisputable rights which belong to her, and have shown, in various ways, that they wished to behold the light which was kindled and kept alive by Thrasybulus and Epaminondas — the light of freedom — again burning upon her sacred soil, and which the right of the stronger had extinguished for so great a length of time.

Sir, your noble sentiments were long ere this well known to our nation. But your timely proposal of the plan of a political and constitutional code—which, as being the offspring of so distinguished a political philosopher, will happily organize the infant constitution of Greece — has still more clearly evinced your friendly sentiments for the Greeks. But, besides this, your proposal for educating three young Greeks at your expense, offers still further motives to the sincere gratitude of the Greek nation, and the great satisfaction of that government, whose sentiments I am charged to interpret: for from this it is evident that you wish not only the political existence, but the moral welfare of our nation.

I am charged also to assure you, that my government desires you will not cease continually to watch over her operations, and to afford her the benefit of those deep political views of which Greece at present stands so greatly in need, in order to be led happily to the sacred end of her independence; an end which the respectable friends of the Greek cause will not cease to accelerate by all possible means that are consistent with the general good of human nature; and while tradition and history will preserve immortal the revered names of such persons, the gratitude which exists in the hearts of the Greek nation will remain indelible.

The Provincial Secretary-General,
(Signed) P. G. RODIOS.

The 12th of August 1824, O. S.
Napoli di Romania.

Letter 2. To the Greek Provisional Government: with the Buenos Ayres Tactic Code, &c.

Jeremy Bentham à l'Assemblée de la Grèce.

LÉGISLATEURS! —Ci-joint est un present que je prends la liberté de vous offrir. Ce n'est pas ce qui auroit été un ouvrage de ma façon, un simple projet, et rien de plus : c'est un réglement, qui déjà pendant trois années a dirigé tous les procédés d'une assemblée legislatrice. Cette assemblée est celle de la république de Buenos Ayres, dans l'Amerique Méridionale. L'éxemplaire pour lequel je prie l'honneur de votre acceptation, en est peut-être le seul qui existe présentement en Europe. La date, comme vous voyez, n'y est pas. Il m'a été envoyé par son auteur, Bernardino Rivadavia, dans une lettre, datée du 26 Août, 1822, laquelle, par je ne sais quel malheur, ne m'est parvenue qu'au 5 Avril dernier (1824.) Il y a environ une quinzaine que j'ai eu la satisfaction, si inesperée, de le serrer dans mes bras ici à Londres, où i. est venu pour quelques affaires, gouvernant tou-

jours par les élèves qu'il a formés, et la reputation unique qu'il a acquise. De tous les états formés, ou plutôt qui se forment, sur les débris des monarchies Espagnoles et Portugaises en Amerique, le seul, qui a pris jusqu'ici une assiètte ferme et heureuse, est celui dont on peut le dire le fondateur: aussi est-ce le seul auquel le gouvernement Anglois a donné des marques non-équivoques d'estime. Je viens d'en voir, qui, pour n'être pas publiques n'en sont pas moins essentielles et authentiques.

Législateurs! Je vous envoye ce réglement, et je ne l'ai pas même lu. Voici pourquoi. Dans le moment, nul besoin pressant, ne me portait à le lire, et je me suis contenté d'en faire faire une traduction Angloise, que je garde. Présentement, ce n'est que depuis quelques heures que l'idée de le mettre a profit de cette manière se m'est presentée. Le navire est au point de partir. Si, après l'avoir lu, il m'etoit arrivé de trouver, ne fût-ce qu'un seul point, sur lequel je ne fus pas d'accord avec l'auteur, je n'aurois pas pû vous l'envoyer sans réserve: et cette réserve, je ne l'aurois pû faire sans en donner les motifs, ce qui auroit entrainé des longueurs point du tout convenables. Cependant, au moins d'avoir des raisons suffisantes pour être persuadé, que le tout ensemble est d'accord avec mes principes, je n'aurois pas eu la hardiesse d'y attacher, pour ainsi dire, mon cachet en vous en faisant l'offre. Dans le moment, je trouve une copie que j'en avais fait tirer de la lettre qui l'accompagna: elle pourrait vous faire voir si c'est sans fondement que je me fie à sa conformité avec mes principes.

"Bon pour la théorie, mauvais pour la pratique," aphorisme qui se contredit lui-même, mais qui n'en est pas moins en faveur auprès ceux dont les interêts particuliers se trouvent contrariés, par une mesure contre laquelle il n'y a pas autre chose à dire. Quoiqu'il en soit, le présent n'est pas du nombre des cas où ce sophisme puisse espérer à trouver acceptation: car il y a déjà trois années au moins, pendant lesquelles cette base de toutes les loix a soutenu avec éclat l'épreuve de la pratique.

Les offices qu'occupait Rivadavia, lorsqu'il a redigé ce réglement, et qu'il a continué d'occuper jusqu'au moment de son départ pour Londres, sont ceux de ministre de finance, ministre de l'intérieur, et ministre des affaires étrangères.

J'ajouterai peut-être un ou deux autres morceaux de même main, dans la pensée, que, peut-être, par occasion, ils pourront, à vos yeux, être utiles à consulter au moins, si non à servir de modèle.

Quant à moi, je viens de faire passer dans les mains d'un Grec bien instruit, pour être traduite, la première feuille d'un projet d'un code constitutionel pour un etat quelque ce soit; ouvrage qui m'a déjà couté plus de deux années de travaux sevères, qui heureusement approchent à leur terme. Il sera imprimé ici en Anglais, en Grec, et peut-être en d'autres langues. L'Espagnol ne sera pas oublié.* Les occasions qui pourroient s'offrir pour vous en offrir des exemplaires, en nombre suffisant, ne seront pas perdues. Législateurs, vous leur donnerez le sort, que vous prescrira votre sagesse. (Signé) JEREMY BENTHAM.

Londres, Sept. 21, 1824.

(TRANSLATION.)

Jeremy Bentham to the Legislative Assembly of Greece.

LEGISLATORS! Annexed is a present which I take the liberty to offer you. It is not merely what a work of my making would have been—a simple project, and nothing more; it is a regulation, which already, during three years, has directed all the proceedings of a legislative assembly. This assembly is that of the Republic of Buenos Ayres, in South America. The copy, for which I beg the honour of your acceptance, is probably the only one that now exists in Europe. The date, as you see, is wanting. It was sent me by its author, Bernardino Rivadavia, in a letter dated the 26th August 1822, and which, by some means, did not reach my hands until the 5th April 1824. It is now about a fortnight since I had the unlooked-for satisfaction of clasping him in my arms here in London, where he is come on some business, still governing, however, by the pupils which he has formed, and the reputation which he has acquired. Of all the States formed, or rather forming, out of the wreck of the Spanish and Portuguese monarchies in America, the only one which hitherto has taken a firm and happy footing, is that of which he may be called the founder: it is, too, the only one to which the English government has given unequivocal marks of esteem. I have recently seen evidence of it, which, though not public, is not less authentic.

Legislators! I send you these regulations, and I have not even read them. This is the reason: there was no immediate motive for my doing so, and I have contented myself with causing an English translation to be made, which I retain. Meanwhile it is only within these few hours that the idea of thus putting it to use occurred to me. The ship is on the point of sailing. If, after having read it, I had chanced to find, were it only a single point, on which I did not agree with the author, I could not have sent it you without a reservation, and that reservation I could not make without giving you the rea-

* May 1827. Of the two volumes of which it consists, an impression (a translation of the first) is far advanced: translator, Dr. Puigblanch, late professor of Hebrew at Alcalá, and subsequently, Deputy from Catalonia to the last Spanish Cortes.

sons, which would have drawn me into discussions of inconvenient length; nevertheless, I am persuaded I have sufficient motives for thinking it agrees with my principles on the whole, or I should not have had the hardihood to attach as it were my seal to it, by making you the offer of it. I have this moment found a copy which I had taken from the letter which accompanies it. You will see by it whether I have not justly trusted to its conformity with my principles.

"Good in theory, bad in practice," is an aphorism which contradicts itself, but which is not the less in favour with those whose particular interests are thwarted by a measure against which there is nothing else to say. However, the present is not amongst the number of cases in which this sophism can hope to find acceptance; for three years at least have passed, during which this basis of all laws has sustained with éclat the proof of practice.

The offices which Rivadavia filled when he drew up these regulations, and which he continued to fill, up to the moment of his departure for London, were those of minister of finance, minister of the interior, and minister of foreign affairs.

I shall add, perhaps, one or two sentences by the same hand, in the idea that, in your eyes, they may appear useful to consult, if not to serve as models.

With regard to myself, I have just delivered into the hands of a well-informed Greek, for the purpose of translation, the first sheet of the project of a constitutional code applicable to any state—a work which has already cost me more than two years of hard labour, which is fortunately approaching a close. It will be printed here in English, in Greek, and perhaps in other languages. The Spanish shall not be forgotten. Any opportunities that may offer to transmit you copies shall not be lost. Legislators, you will give them that fate which you in your wisdom may think they merit. (Signed) Jeremy Bentham.

London, September 21, 1824.

6. *Theodore Negris to Jeremy Bentham, desiring his assistance towards forming a Civil Code.*

Monsieur,—Dans l'intention de travailler à la formation d'un code civil pour ma nation, je sens le besoin d'être guidé à ce travail. Votre rare mérite à cette science profonde, et votre amour pour le bien de l'humanité, si connus du monde, me faisaient chercher l'occasion de m'addresser à vous. Ce fut la connaissance que j'ai eu l'honneur de faire dernièrement de l'illustre ami de la Gréce, M. le Colonel Stanhope, qui vient de me la procurer. J'en profite, Monsieur, pour vous dire en peu de mots que je me propose de travailler sur le Code Civil des Français, en y substituant toutefois tout ce que je croirais plus conforme à notre regime constitutionnel Quant à l'ordre des matières, je ne crois pas pouvoir trouver un meilleur code que celui-ci.

C'est là, Monsieur, le plan du travail que je me propose d'embrasser. Je me fais un devoir de le mettre sous vos yeux, afin de savoir votre opinion à cet égard, et profiter de vos lumières pour tout le detail de l'ouvrage.

Le code civil étant de nature à influer indirectement au moral des hommes, comme il influe directement au sort de la société, il est essentiel pour notre régénération qu'il ne s'éloigne point, s'il est possible, des principes immuables de la raison. Le seul moyen d'y parvenir est d'obtenir encore votre assistance et votre direction, que vous ne me refuserez pas sans doute, vû qu'il s'agit de contribuer à la guérison des plaies d'un peuple, jadis illustre pour ses lumières, et renommé pour les avantages qu'il a procurés à la société.

Quant à ce qui concerne les autres moyens dont je pourrais avoir besoin dans ce travail, M. le Colonel a bien voulu prendre connaissance.

Au reste, je saisis cette occasion pour vous donner l'assurance des sentimens de haute estime et considération distinguée, avec lesquelles j'ai l'honneur d'être, Monsieur, votre très-humble et très-obéissant serviteur,

(Signé) Th. Negris.*

A Monsieur Mon. J. Bentham, &c. &c. &c.

(translation.)

Sir,—Intending to labour in the formation of a civil code for my nation, I feel the necessity of a guide in this undertaking. Your rare merit in this profound science, and your love for the cause of humanity, are so well known, that they compel me to seek a motive for addressing you. The acquaintance which I had lately the honour to make with that illustrious friend of Greece, Colonel Stanhope, has procured me this gratification. I avail myself of it, Sir, to tell you, in a few words, that I propose to work on the French Civil Code; substituting, nevertheless, all that I think more conformable to our constitutional regime. With reference to the arrangement of subjects, I do not believe I can find a better code than this.

This, Sir, is the plan of the work that I

* Theodore Negris, who was at this period Minister of Justice, was one of the few men who had formed a correct estimate of the wants of his country; and since his death no individual has appeared to supply his place by forwarding, or even by recommending the adoption of any code of laws, which has long been, and still is, one of the primary necessities of Greece. Negris had the sagacity to see the necessity of a prompt attention to this subject, and the virtue to urge the early consideration of it on all whom he could influence. But his power was inconsiderable, even when he possessed office, and he died soon after the dispatch of the above letter.

purpose to undertake. I think it my duty to place it before you, in order to ascertain your opinion on this head, and to profit by your remarks in all the details of the work.

The civil code being of a nature indirectly to influence the moral conduct of man, as it directly influences the situation of society, it is essential for our regeneration, that it should wander as little as possible from the immutable principles of reason. The only means to obtain it is to have your assistance and your direction, which, without doubt, you will not refuse me, seeing that it will contribute to heal the wounds of a nation, formerly illustrious for its knowledge, and renowned for the benefits which it has conferred on society.

With regard to what concerns the other matters of which I may stand in need in this work, Colonel Stanhope has kindly taken charge of. I take this occasion to assure you of the high sentiments of esteem and distinguished consideration, with which I have the honour to be, Sir, your very humble and very obedient servant,

(Signed) TH. NEGRIS.

To Mr. Jeremy Bentham, &c. &c. &c.

Jeremy Bentham to Theodore Negris, in answer to his letter No. 6.

Ἰερεμίας Βενθὰμ τῷ Θεοδώρῳ Νέγρῃ, χαίρειν.

C'est avec un plaisir bien sincère que j'ai reçu, par les mains de notre illustre et excellent ami l'Honorable Colonel Leicester Stanhope, la lettre dont vous avez bien voulu m'honorer. Je recevrai, si je suis encore en vie, avec une satisfaction correspondante, votre travail dont vous me donnez l'espérance sur le code civil; et j'y porterai l'attention, dont, au dire de notre susdit ami, il ne peut manquer d'être digne. A l'en croire, c'est un vrai bonheur pour la Grèce, de contenir dans son sein une main, si bien assortie à une espèce de travail littéraire, dont l'importance laisse en arrière à une distance infinie toutes les autres.

Quant au Constitutionnel — un code, sur lequel j'ai travaillé à-peu-près deux années, manque peu d'être en état d'être envoyé en manuscrit à Paris, à votre excellent Docteur Corai,* qui a eu la bonté de promettre d'en faire une traduction en Grec moderne, laquelle sera imprimée à Paris, et je crois avec l'Anglais à coté, pour les exemplaires en être distribués en Grèce.

Vous m'obligeriez, Monsieur, en me donnant quelques renseignemens sur les endroits qui seroient les plus convenables à cet égard, et les personnes dans ces endroits auxquelles il seroit le plus convenable de les adresser.

Aprés la situation de *Premier Ministre*, lequel, dans le corps législatif est dans mon code le premier fonctionaire, à-peu-près comme chez les Etats Unis Anglo-Americains, le President — la plus importante est celle de *Ministre de la Justice:* et c'est avec une satisfaction peu ordinaire que je crois voir, dans la personne de l'auteur destiné du code civil, un legiste, et homme d'état si capable de la remplir.

Ayant ouï dire, que par ci et par là en Grèce, il existe plusieurs exemplaires de mes ouvrages edités en Français par mon ami Dumont, ou au moins de l'ouvrage principal, nommé *Traité de Legislation, Civile et Penale,* en trois volumes, en 8vo, il m'est triste d'apprendre, qu'aucun au départ de Stanhope, n'en avoit jamais passé dans vos mains. Par la présente occasion, j'ai fait ce que j'ai pû pour combler une partie de ce vide, et je me mets en devoir pour en trouver d'autres. Un exemplaire d'un traité sur les Preuves Judiciaires, dans lequel j'ai tâché de couvrir le champ entier de ce sujet jusqu'ici vierge, est actuellement dans mon pouvoir: mais par cette occasion, qui est pressante, je ne sais pas dans le moment si je pourrais trouver ici des exemplaires de l'un ou de l'autre des deux autres de mes ouvrages ci-dessus indiqués. Je vais envoyer tout ce qui, dans le moment, est en mon pouvoir, de ceux qui sont en langue intelligible. Quant a ceux qui sont en Anglais, ce n'est pas le moment pour chercher à en encombrer vos tablettes.

La presente est accompagnée d'une liste à-peu-près complette de ceux de mes ouvrages qui ont jusqu'ici sorti de la presse. Ils ne sont pas tous encore publiés.

Dès que ce paquet vous soit parvenu, je me fie à votre amitié pour saisir la première occasion de m'en faire recevoir la nouvelle.

(Signé) JEREMY BENTHAM.

(TRANSLATION.)

Jeremy Bentham to Theodore Negris.

I HAVE received by the hands of our illustrious and excellent friend Colonel Leicester Stanhope, with very sincere pleasure, the letter with which you have been so good as to honour me. I shall receive, if I am still alive, with corresponding satisfaction, the work which you allow me to hope for on the civil code; it shall have my best attention, of which, according to our said friend's account, it cannot fail of being worthy. It must be truly an honour to Greece, to possess a pen so appropriately qualified for a literary labour, whose importance leaves all others at an infinite distance.

As far as the constitutional part is concerned, a code upon which I have laboured nearly two years, is very nearly in a state to be sent in manuscript to Paris, to your excellent Doctor Corai, who has had the goodness to promise to make the translation into modern Greek, which will be printed at Paris, and I believe with the English annexed, in order that the copies may be distributed in Greece.

* By the death of that excellent man, this design was frustrated.

You will oblige me, Sir, by giving me some information respecting the most eligible places for that purpose, and also the persons at those places to whom it will be proper to address them.

After the situation of *prime minister*, who, in the legislative body, is in my code the first functionary, nearly similar to the President of the Anglo-American United States, the most important is that of the Minister of Justice; and it is with no little satisfaction, I perceive, in the person of the author of the civil code, a legist and statesman so well able to fill that office.

Having heard, that here and there in Greece there are several copies of my works, written in French by my friend Dumont, or at least of the principal work, entitled, "*Traité de Legislation Civile et Penale*," in three volumes in 8vo, I regret to find, that at the period of Colonel Stanhope's departure it had not been seen by you. By the present occasion I have tried to repair that loss, and shall also avail myself of future opportunities. A copy of a treatise on judicial evidence, in which I have tried to lay open the whole field of argument, is now finished; but by this opportunity, which is a hurried one, I am in doubt whether I shall be able to forward copies of either one or the other of these works. I shall send all I possess which are in a language familiar to you. With regard to those which are in English, it will not be worth while to encumber you.

The present is accompanied by a nearly complete list of such of my works as have already issued from the press, but they are not yet all published.

As soon as this packet comes to hand, I trust to your friendship to take the first opportunity to let me know you have received it.

(Signed) Jeremy Bentham.

Letter 3. To the Provisional Government of Greece: with part of a Constitutional Code.

Legislators, — On the 25th of October last, 1824, I had the pleasure to receive the two letters with which you were pleased to honour me, both dated from Napoli de Romania; the one, of the 11th August 1824, with the signatures of the *vice-president, and chief secretary of the senate;* the other, of the next day, with the signature of the *provisional secretary-general, P. G. Rodios*, according to the translations with which I was favoured by your three deputies here.

The favourable mention which you are pleased to make, of such of my papers as you had then received, fills me with shame and regret at the thoughts of the imperfect state in which I was obliged to send those fragments. My hopes were, that they might prove somewhat better than nothing: and it was in that hope that I ventured thus to put to hazard any little reputation which may belong to me.

Since that time, to wit, by a letter dated 24th September 1824, or thereabouts, I ventured to address to you, together with an explanatory paper or two, an ordinance in Spanish relative to the tactics of the legislature of the republic of Buenos Ayres, in late Spanish America. For my pardon for this liberty, I trusted to the accompanying assurance given me by the illustrious draughtsman, that it had been framed in conformity to the principles developed in a work of mine, which for these fourteen years has been before the public in French.

I now take the further liberty of begging your acceptance of a concisely expressed, but, in so far as my conception is correct, an all-comprehensive plan, for the education, location, and remuneration of the functionaries of any republican government, in all their several official situations. Without any addition at the expense of the public, the same plan is calculated to serve for an entire system of national instruction, so far as regards those whose condition in life requires, while their pecuniary circumstances enable them, to improve their minds by intellectual culture. I have therein, I hope, made tolerably well apparent the inseparable connexion which, in the case of official men, I have found to have place between the strictest frugality and the highest degree of aptitude, with reference to their several situations. Principle, title, and motto — *Official aptitude maximized — expense minimized.* I know not whether, in any such compressed form, it will be found translateable, with correspondent concision, into your present language. From first to last, in preparing these papers, I have kept a more especial eye on what has been represented to me as being the situation of that country — I need not name it to you — which is in so preeminent a degree dear to me.

This plan is contained in four out of the twenty sections, or thereabouts, of the twenty-eight chapters, or thereabouts, into which the matter of my proposed code, in its present state, stands divided. Alas! it is not even yet completed: still, so far as regards the proposed text, it wants but very little of being so. Reasons, expository matter, and instructions for the legislator, are settled in substance, and may from time to time follow, according as time and occasion permit. My hope is, that, in some degree, the proposed text will be found to contain in itself the essence of the reasons by which it was suggested. I inclose the titles of the several chapters and sections of the whole, as they stand at present.

A circumstance which, in no inconsiderable degree, has contributed to the retardation, is the necessary and most intimate connexion

which has place between the code of judicial procedure, and that part of the constitutional code which regards the judiciary branch of the official establishment. In that same procedure code, I have already made considerable progress. In it my endeavour has been, to apply upon a national scale, as far as circumstances will allow, those simple principles by which the conduct of a kind and prudent father is guided, in the judgment exercised by him on the conduct of his children. If I live to finish it, it will be the first code of procedure that ever had the ends of justice for its sole, or so much as its main, object: all others having had for their main object the advancement of the sinister interest of their makers — the ruling functionaries; more especially those of the judiciary class, and those their professional associates, from whom they spring: and to this cause may be attributed all that harshness, obscurity, unnecessary complicatedness, and expensiveness, by which all the procedure codes as yet in existence are more or less strongly marked.

Another paper, which I now add, is designed to serve as a substitute to a short section in the *former edition* — if I may so call it — of my Code: it is that which regards the re-eligibility of the members of the legislative assembly, composed of deputies of the people. The object of it is, to supply, for that most important of trusts, a constant stock of competitors, composed of *tried men*, whose degrees of aptitude, absolute and comparative, have been manifested by experience; instead of placing things, as is customary, upon such a footing that, whether the first choice be fortunate, or ever so unfortunate, the people find themselves, notwithstanding the forms of election, under a sort of necessity to continue it. This point I flatter myself with having secured; and at the same time, without depriving the people of any part of that advantage, which is looked for in the continually increasing experience and wisdom of those who have distinguished themselves among their colleagues.

Postscript relative to the ten Greek Youths brought to England, Anno 1824, *by Mr. Blaquiere.* — (It will be read to the Legislative Council, or otherwise disposed of — for example, by being sent to a Government newspaper — as they may be pleased to direct.)

In regard to the Greek youths, whom Mr. Blaquiere brought hither for education, I have observed in one of the Greek newspapers, a little misconception, which it seems incumbent on me to rectify. *Three* is there mentioned as the number for which I have undertaken to provide. *Two*, and two only, is the number to which my engagement applied. This appears from the printed work published here in London, by Colonel Stanhope, intituled, "Greece in 1823 and 1824," in which is inserted the commission given to him on that subject by me; as also from my correspondence on the subject with your deputies here, as contained in two letters, one from me to them, dated March 1824, the other from them to me, dated March 1824: and the time mentioned as that during which my engagement for their maintenance and education here was to continue, stands limited to three years. The expense to me will be from about £160 to about £180 a-year — dollars 850, more or less, *per annum.*

No disappointment will, I flatter myself, be experienced on that account. *Ten* is the number of youths whom M. Blaquiere took charge of. Regretted, to the degree that may be imagined, one of them died on the passage. Of the *nine* that arrived, one has been taken charge of by a friend of mine, with whom I am likely, every now and then, to see him: my friend being highly delighted with him, and entertaining, in relation to his intellectual proficiency and political usefulness, the most sanguine expectations.

The two, whom, upon hearing the report of the trust-worthy persons with whom they have been stationed for the purpose of learning to hold conversation in English, I have taken charge of, are *Stamos Nakos*, son, if I am not misinformed, of an eparch of Livadia, and *Eustratios Rallis.* Not many days ago, under the charge of one of the masters, they went to the school, the character of which, as abundantly made known to me, constituted an inducement, without which I should never have ventured to take upon myself so serious a charge.*

Three are thus accounted for. The other six remain under the care of those of our distinguished Philhellenists who have so long combined their benevolent labours under the aggregate name of the *Greek Committee.*

Receive once more, venerable legislators, the ardent good wishes of your laborious and devoted servant, JEREMY BENTHAM.

Queen's-Square Place, Westminster,
January 28, 1825.

* Nakos, having for a considerable time been labouring, to an alarming degree, under the indisposition called, in familiar language, *mother-sickness*, and his mother, at the same time, under the corresponding malady, was, at their joint request, sent back to Greece, under the care of the then Greek envoys, Messrs. Orlando and Luriottis; but, when he went, it was with a declared intention to come back again, if he could find means, after a residence of a year or two in his native land. *Rallis*, before he had passed at Haslewood his term of three years, had made such progress, and conducted himself so well in every respect, that he received from the masters an invitation to continue his residence at the school, in quality of usher, which invitation he accepted.

7. *Letter accompanying the Certificate of Jeremy Bentham's Election as a Member of the Philanthropic Society at Tripolitza.*

Πρὸς τὸν Νομοδιδάσκαλον, Ἱερεμίαν Βενθάμην.

Σεβαστὲ Ἄνερ, — Ἂν καὶ δὲν ἐδυνήθην νὰ καρπωθῶ προσηκόντως ἀπὸ τὰ σχεδὸν ἀρχέτυπα τῆς πολιτικῆς φιλοσοφίας συγγράμματά σου, διὰ τὴν ὁποίαν πραγματεύονται ὑψηλὴν ὕλην, καὶ πολλῷ ἀκόμη ὑψηλοτέραν εἰς τοὺς σημερινοὺς Ἕλληνας, δὲν ἠμπορῶ μ' ὅλον τοῦτο ν' ἀποσιωπήσω ὅτι ἀπὸ τὴν ἀνάγνωσιν τούτων ὠφελήθην, καὶ ὅτι ἡ ὠφέλεια αὕτη δὲν μένει πολλάκις χωρὶς καρπὸν εἰς τὰς νομοθετικὰς τοῦ Ἔθνους μου ἐργασίας, εἰς τὰς ὁποίας ἡ Πατρίς μου μ' ἔστειλε συνεργόν. Κατὰ χρέος λοιπὸν ἀπαραίτητον, σοὶ ὁμολογῶ ἀπείρους χάριτας, καὶ σοὶ ἐπεύχομαι ὑγείαν καὶ μακροβιότητα διὰ τὴν ὀρθὴν διευθέτησιν καὶ ὠφέλειαν τοῦ πολιτικοῦ ἀνθρώπου.

Ἐκ τῶν ἀντιπροσώπων τῆς Κρήτης,
ὁ Ἐμ. Ἀντωνιάδης.

Ἐν Ναυπλίῳ,
τῇ 11 (23) Αὐγούστου, 1824.

(SUBSTANCE OF THE ABOVE.)

To the Master of Laws, Jeremy Bentham.

Honoured Sir, — Though not able to avail myself of your writings to their full extent, I have received much instruction from their perusal, and I trust they will be permanently useful to my country. Allow me, then, to communicate to you my own thanks, and the thanks of my countrymen, and to hope your life may be prolonged many happy years. I have the honour to subscribe myself, Sir,

EMAN. ANTONIADIS,
The Vice-President of the Island of Candia, &c. &c.

Napoli, 11-23 August 1824.

12. Ἀριθ. τοῦ Πρωτοκόλλου.

Φιλανθρωπικὴ Ἑταιρία.

Κατατάττεται Ὁ Κύριος Ἱερεμίας Βενθάμης εἰς τὴν πρώτην τάξιν τῆς Φιλανθρωπικῆς Ἑταιρίας.

Ἐδόθη ἐν Ναυπλίῳ τῇ ιδ' Αὐγούστου ᾳωκδ Δ' τῆς Ανεξαρτησίας.

Ἡ Ἐπιτροπὴ, — Νικόλ Γερακάρης.
N. Καλλέργης.
Γεώργιος Γλαράκης.
Ἰωάννης Θεοτόκης.
Δημ. Δεσσίλλας.
Θ. Νέγρης.
Ἰωάννης Βλάσσης.
Γραμμ, — N. Φλογαΐτης.

(TRANSLATION.)

Philanthropic Society.

The name of Jeremy Bentham is inscribed in the first class of the Philanthropic Society.

Given at Napoli, 14th August 1824.

Directors — NIC. GERAKARIS.
N. KALLERGIS.
GEORGE GLARAKIS.
JOHN THEOTOKIS.
DEM. DESSILLAS.
TH. NEGRIS.
JOHN VLASSIS.
The Secretary — N. PHLOGAITIS.

Jeremy Bentham to Alexander Mavrocordato.

Encouragé par Bowring, je me hazarde à vous adresser de cette manière, mon fils, pour vous présenter quelques petits conseils, qui conviennent, ce me semble, à votre position, et dont les motifs ne peuvent pas être méconuus. Pour fondement, je suppose (car dans toute autre supposition, il ne vaudrait pas la peine de lire davantage) — je suppose qu'à l'égard de quelque partie de mon projet ue code constitutif, il n'y auroit pas de repugnance à en faire plus ou moins d'usage. Or c'est en vous que je crois voir le chef déstiné de la république. Dans mon code le chef ne s'appelle que *Premier Ministre*, soumis entièrement au corps legislatif, comme celui-ci est au *peuple* en sa qualité de *corps constitutif.* Nonobstant cette double sujettion, voilà, ce me semble, un poste qui ne serait pas à dédaigner par quelque individu que ce soit, même par celui qui sans cela serait le chef et le seul chef. Car vous voyez, ou bien vous verrez, comme il a sous ses ordres tous les sous-ministres dans les départemens desquels, pris dans leur ensemble, est compris le total de l'autorité administrative; et comme c'est à lui à les deplacer aussi bien qu'à les placer: et qu'il n'est pas, comme le chef des Etats Unis, éntravé par un senat, lequel, tout en lui allégeant, et rendant, pour ainsi dire, ineffectif, le joug de la responsabilité, lui ôte en même tems à l'égard du placement d'une grande partie des fonctionnaires en sous ordre vingt-une sur vingt-deux parties: puisqu'il ne peut rien faire dans ce genre sans le consentement de la majorité de leur nombre, c'est à dire de *quarante:* ainsi il ne tient qu'à eux d'exiger que sur chaque vingt-deux places chacun d'eux place un de ses protégés, en lui laissant la vingt-deuxième.

Quant à cette double sujétion ci-dessus, je n'y vois rien qui devroit vous donner le sentiment d'un gêne incommode; ni par rapport à l'intérêt de l'état, ni par rapport à votre intérêt en particulier. Il me semble, que si vous avez le bonheur de posséder le degré de popularité que l'on dit que vous possédez, vous n'en souffreriez rien en effet. Car, au gré du peuple en son entier, je ne saurois m'imaginer comment un homme, qui, sous une forme de gouvernement provisoire, est en effet le chef de l'état, puisse mieux mériter, qu'en le placeant ce même peuple, au moyen du pouvoir constitutif, sur la tête de la puissance legislative; laquelle, sans cette subordonnation, auroit le pouvoir absolu, puisqu'elle n'est pas éntravée par aucune puissance coordonnée, par aucun autre corps politique, ni par un *veto* dans les mains d'aucun individu. Cela étant, si pour accepter la position que je vous déstine, vous avez un sacrifice à faire en apparence, ma pensée est, que dans votre particulier ce ne serait qu'en apparence

puisque ce que vous perdriez en pouvoir nominal et ostensible, vous en gagneriez l'equivalent, et même d'avantage, en influence effective; si cela est, la diminution de pouvoir effectif ne serait pas pour vous: elle ne serait que pour vos successeurs. Vous l'auriez pour la vie ce pouvoir si solide, à moins que le corps legislatif ne s'avise à vous deplacer: mais si vous vous conduisez de façon à conserver l'estime du peuple, le corps législatif, soumis comme il est au pouvoir constitutif de ce même peuple — ce corps dont chaque membre peut en tout tems être deplacé par ses commettans—n'oseroit pas vous déplacer.

Au reste, quant à ce pouvoir, que j'appelle *dislocatif*, que je donne au peuple, non seulement à l'égard des membres du corps législatif, et cela, mais aussi à l'égard du premier ministre, ne craignez pas qu'il n'en abuse à votre prejudice. Oui, si en deplaceant un premier ministre, il pourrait en même tems en mettre un autre à sa place; car, dans ce cas, il ne sauroit manquer tel et tel boutefeu, constamment emploié à les engager à deplacer le fonctionnaire actuel, sans raison valable, et seulement pour l'avantage, à lui boutefeu, de s'emparer de la dépouille ou de la faire donner à quelqu'un avec lequel il agit en concert.

Mais, d'après le code dont il est question, aucun meneur du peuple ne sauroit se faire un profit particulier, de cette façon ni d'aucune autre: ainsi, si jamais il se trouvoit quelqu'un assez hardi pour en faire la proposition, ce ne pourroit être que dans la persuasion que le bien de l'état demande ce changement d'une manière imperieuse: persuasion, dans laquelle, pour réussir, il lui faudroit la concurrence, active et soutenue, de la majorité du peuple.

On verroit, il est vrai, le corps législatif et le corps constitutif, c'est à dire le peuple, au-dessus de vous: ainsi, ce n'est que provisionellement que l'on vous verroit placé pour le vie; puisque non seulement le corps législatif mais aussi le corps constitutif, auroit toujours le pouvoir de vous deplacér.

Mais, au lieu d'un pouvoir adverse, le pouvoir du corps constitutif seroit pour vous une sauvegarde: car si, par avoir bien servi les intérêts du peuple, le corps legislatif s'aviserait de vous deplacer, il ne manqueroit pas d'encourir le ressentiment du peuple, et par là, l'influence individuelle des membres de ce corps seroit reduite à nullité.

Et ce pouvoir du corps constitutif, quelque grand qu'il paroisse, puisqu'il renferme celui de déplacer tous ses fonctionnaires — qu'est-ce en effet? Ce n'est qu'un pouvoir purement défensif, et il n'y a aucun motif par lequel il pourroit être conduit à en abuser. Oui; s'il s'y trouvoit attaché le pouvoir de placer, ne fût-ce qu'un seul individu, dans une situation, douée, soit d'un grande masse de richesse, soit d'un grand pouvoir; dans ce cas, il en auroit et la tentation et le moyen; car, dans chaques corps de votans il y auroit quelque meneur, qui, pour acquérir, soit pour lui-même, soit pour un associé, l'objet désirable, s'efforcerait d'en faire dépouiller le possesseur. Mais sous le code proposé, hormis les sièges dans l'assemblée legislative, ni le corps constitutif en son entier, ni aucune de ses sections, n'a la moindre place à donner; de toutes les places, le patronage se partage entre vous et le ministre de la justice; et ces places dans l'Assemblée, il n'y en a aucune, qui donne au possesseur dans son particulier le moindre objet de convoitise: le seul objet de la sorte, dans la collation duquel il possède la moindre influence directe, c'est l'office de premier ministre: et dans l'exercice de cette fonction il n'a qu'un pouvoir fractionnaire, n'étant à cet égard rien par lui-même:—rien, sans avoir avec lui la majorité de ses collègues. Je finis à la Romaine — *Vale et me ama.*

(TRANSLATION.)

Encouraged by Bowring, I venture to address you in this manner, my son, for the purpose of suggesting to you a few considerations which present themselves to my view, as being applicable to the position you are in. Of the liberty I am thus taking, the motives are too obvious to be in danger of being misunderstood. For a postulate I assume — for, but for this supposition, all motive for reading further would be wanting to you — I assume that, in regard to this or that part of my project of a constitutional code, there will not be on your part any insurmountable repugnance to the making more or less use of it. To this supposition I add another, namely, that in you I behold the destined chief of the republic. In this code of mine, the appellation of the chief single-seated functionary is simply Prime Minister — his situation altogether subordinate to that of the legislative body, as that of the legislative body is to that of the people, in their quality of constitutive body. Notwithstanding this two-graded subordination, here, in my view of the matter, is a situation not likely to be an object of disdain, even to a person who otherwise would be a chief, and even the sole chief; for, you see, or at least may see, how it is, that under his direction are all the several ministers, in whose departments, taken in the aggregate, is comprised the aggregate of the administrative authority, and in what way it is in his power to dislocate them (as I call it) as well as locate them; and that his authority is not, like that of the chief of the United States, clogged by that of a senate, which, while on the one hand it lightens to such a degree as almost to render inefficient the yoke of his responsibility, strips him, at the same time, of one-and-twenty out of two-and-twenty

parts of his power of location, with regard to each of a great part of the whole number of functionaries whose situation is subordinate to his. For (the number of the members of the senate being forty) nothing in this way can he do without the consent of a majority of that number, that is to say, one-and-twenty at the least; a consequence of which is, that it rests at all times with each of them to obtain a situation of this sort for one of his *protégés*, on condition of leaving to the president (such being their title of their chief functionary) the undisturbed nomination of one other, and no more than one.

As to the above-mentioned double-graded subordination, so to style it, I see nothing in it that will, when viewed in its true light, present to you the image of a troublesome yoke; troublesome either with reference to the interest of the community at large, or with reference to your own personal interest in particular. It seems to me, that if you have the felicity of possessing that degree of popularity which you are said to possess, the yoke, such as it is, is one from which you will not feel any real inconvenience; for it seems not to me in what way it is possible for a man who, under a popular form of government, is in effect as well as in name the chief of the state, in any other way more effectually to recommend himself to the favour of the whole body of the people, than by putting and keeping that same body in effect over the head of the legislative authority — that same authority which, but for this subordination, would be in possession of absolute power, not being shackled by any other authority that is co-ordinate to it, by any other body politic, nor by a veto in the hands of any single person. This being the case, if so it be that, by giving your acceptance to the situation which I have thus marked out for you, a sacrifice of any sort would be to be made by you, my notion of the matter is, that in your own individual instance any such sacrifice would be in appearance only; the case being, that for whatever you lost in nominal and ostensible power, you would gain more than the equivalent in effective influence: in which case, the diminution of power would not apply to you; it would be confined to your successors. This power, substantial as it is, you would possess for life, in every other case than that of the legislative body's taking upon itself to displace you; but if you do but so comport yourself as to preserve the esteem of the people, the legislative body, subject as it is to the constitutive power of this said people, liable as every member of it is to be displaced by that part of the people of which his electors are composed, would not dare to attempt to remove you.

Nor yet, in regard to this power, which I call the dislocative power, and which I give to the people, exercisable not only on the members of the legislative body, but also on the prime minister himself, fear not its being abusively employed to your prejudice. Yes, if, after displacing a prime minister, it were also in their power to put another in his place; for in that case seldom would there be any want of this or that demagogue, whose constant object and employment it would be to engage them to displace the functionary in office, whoever he was; to displace him without any sufficient reason, and for no advantage to anybody but this same demagogue, whose object it would be, either to possess himself of the spoil, or to get it bestowed upon some one with whom he was in league.

But under the code in question, no such sinister profit could any leader of the people make, either in this way or in any other, the sole power of filling up the gap remaining with the legislature. Thus it is, that, should there ever appear a person bold enough to bring forward any such proposition, it could not be any otherwise than under the persuasion, that the good of the state presented an imperative demand for the proposed change; a persuasion by which no effect could be produced in any other case than that of its being shared in by the majority of the people.

True it is, there would be the legislative body—there would be the constitutive authority; that is to say the people, in a situation superior to your's; insomuch that it is but provisionally that you would be seated in it for life, since, as above stated, not only that same legislative body, but that same constitutive body, will always have it, each of them, in its power to displace you.

But instead of a power adverse to your's, that of the constitutive body would be a safeguard to it; for if on account of your having done good service to the interests of the people, the legislative body were to take upon it to displace you, it could not fail thereby to incur the displeasure of the people; by which means, each individual whose conduct had been adverse to you, would find his influence in the body reduced to nothing.

And this same dislocative power, thus given to the constitutive body, vast as it appears, since it includes in it the power of displacing every other functionary in the state, what is it in effect? It is nothing more than a purely defensive power, not exposed to the action of any motive, of the operation of which the abuse of it would be a natural consequence. Yes, if attached to it there were any power of placing, though it were no more than a single individual, in a situation endowed with a large mass, either of the matter of wealth, or of the matter of power: in either case, the people would at once be in possession of the means and the motive for making a mischievous exercise of such its power; for, as

above, in each body of voters there would be some leader, who, to obtain, either for himself or for some associate, this object of desire, would be making it his business to endeavour to despoil the possessor of it. But, under the proposed code, no situation whatever, except that of a seat in the legislative assembly, has the constitutive body, either in its entirety, or in any of its sections, the power of conferring. Of all official situations, the patronage would be divided between you and the minister of justice; and of these same seats in the assembly, there is not one which gives to the possessor in his single capacity any the least object of general desire; the only object of that kind, in the conferring of which any member of the legislative body possesses so much as the smallest degree of direct influence (with the exception of the situation of minister of justice) is that of prime minister, and in the exercise of this function, the member possesses no other power than what may be called a fractionary one, he being as nobody taken by himself — as nobody except in so far as he has along with him the majority of his colleagues.

I conclude in the Roman style, "*Vale, et me ama.*"

IX. SOUTH AMERICA.

1. *Letter from Bernardino Rivadavia to Jeremy Bentham.*

Monsieur, — J'ai emporté de votre ville le profond regret de n'avoir pas eu le bonheur de vous trouver visible, lorsque je me rendis à votre maison, afin d'avoir l'honneur de prendre congé de vous. C'est une occasion de m'instruire que le sort m'a ravie, et que je souhaiterois bien reparer, autant que possible, en obtenant quelques mots de réponse à celle-ci. Jamais le souvenir flatteur des procédés obligeans dont vous avez daigné m'honorer, pendant mon sejour à Londres, ne s'éffacera; et croyez que je saisirais avec bien de l'empressement l'occasion qui s'offrirait de vous en temoigner ma vive reconnaissance.

Depuis le dernier instant que j'eus l'honneur de passer avec vous (il y a plus de dix-huit mois,) je n'ai cessé de méditer vos principes en matière de legislation; et à mon retour ici, j'ai éprouvé une satisfaction bien grande, en voyant les profondes racines qu'ils jettaient, et l'ardeur de mes concitoyens à les adopter. Vous verrez, Monsieur, que le réglement de notre chambre des deputés ci-joint, que j'ai eu l'honneur de lui proposer et qu'elle a sanctionné dans une de ses séances, est entièrement basé sur les incontestables et frappantes vérités contenues dans votre ouvrage sur la tactique des assemblées legislatives; et dans la chaire de droit civil que j'ai fait instituer, se professent les principes eternels, démontrés si savamment dans votre cours de legislation (publié par M. Dumont,) ouvrage déstiné à faire marcher à pas de géant la civilisation chez les peuples assez heureux pour savoir l'apprécier.

Vous me ferez le plus sensible plaisir si vous daignez, dans la réponse que j'ai déjà sollicitée de votre bonté, et que j'attends avec une impatience proportionnée au prix que j'y attache, me donner votre avis sur ce même réglement de la chambre, et m'indiquer les changemens, additions, ou modifications qu'il vous paraîtrait nécessaire d'y faire. L'amour de l'humanité qui vous anime, me porte à croire que ma prière ne vous semblera point importune, et aussi, que vous ne lirez point sans intrêt, le précis des ameliorations que la nation se glorifie de devoir à l'impulsion que je m'efforce de donner aux choses, guidé par vos sages préceptes. Ainsi donc vous saurez que je me suis appliqué à réformer les anciens abus de toute espèce, qui pouvaient se rencontrer dans l'administration; à empêcher que d'autres ne s'établissent; à donner aux séances de la Chambre des Représentans la dignité qui leur conviennent; à favoriser l'établissement d'une banque nationale sur des bases solides; à réformer, après leur avoir assuré une indemnité juste, les employés civils et militaires qui surchargeoient inutilement l'état; à protéger par des loix repressives la sûreté individuelle; à ordonner et faire exécuter des travaux publics d'une utilité reconnue; à protéger le commerce, les sciences et les arts; à provoquer une loi, sanctionée par la chambre, qui réduit de beaucoup les droits de douane; à provoquer également une réforme ecclésiastique bien necessaire, et que j'ai l'éspérance d'obtenir: en un mot, à faire tous les changemens avantageux que l'espoir de votre honourable approbation, m'a donné la force d'entreprendre, et me fournira celle d'exécuter.

Agréez, Monsieur, l'assurance de ma parfaite estime, et à l'avance, l'hommage de ma reconnaissance, pour la réponse que j'attend de votre bonté.

(Signé) Bernar. Rivadavia.*

Buenos Ayres, le 26 Aout 1822.

(TRANSLATION.)

Sir, — I sincerely regret not having had the pleasure of seeing you, when I called at your house previous to my leaving London, in order to bid you farewell. It would have proved an opportunity of instruction, of which fate

* At the recommendation of Mr. Bentham, Mr. Rivadavia sent two of his sons to Messrs. Hill's school, at Hazlewood, near Birmingham, from which an off-set is just planted at Bruce Castle, near Tottenham; and so well satisfied has Mr. Rivadavia been with the situation of these his sons, that six more pupils have come from that part of late Spanish America, making, in the whole, eight, among whom some others are relations of Mr. Rivadavia.—*Ed. of orig. Edit.*

has deprived me, and which loss I wish to repair in as far as it is possible, by obtaining a few words of reply to this letter. Never will the flattering marks of kindness which you loaded me with during my stay in London, be effaced from my recollection; and believe me, I shall embrace eagerly every opportunity of showing my lively gratitude.

Since the last moment that I had the honour to pass with you (now more than eighteen months ago,) I have never ceased to meditate on your principles of legislation; and on my return here, I have experienced very great satisfaction in seeing the deep root which they have taken, and the ardour of my fellow-citizens to adopt them. You will observe, Sir, that the annexed regulation of our chamber of deputies, which I had the honour to propose to it, and which it has sanctioned in one of its sittings, is entirely founded on the incontestable and striking truths contained in your work upon the tactics of legislative assemblies; and in the chair of civil law which I have instituted, they profess the eternal principles so learnedly demonstrated in your course of legislation, (published by Mr. Dumont,) a work destined to cause civilization to march with gigantic strides amongst those states that are happy enough to appreciate it.

You will confer upon me the most sensible pleasure, in your reply to this, which I have before solicited, and which I anxiously wait for, with an impatience equal to the high value I attach to it, by giving me your advice respecting this same regulation of the chamber, and to point out to me the changes, additions, or modifications, which you may think proper to make in it. The philanthropy which animates you, induces me to hope my expectations will not seem importunate, and also that you will read with interest the particulars of the amelioration of a nation, who glory in having, through my exertions, received the impulse from your sage precepts. You will also perceive that I have applied myself to reform the ancient abuses of all kinds found in our administration, and to prevent the establishing of others, to give to the sittings of the chamber of representatives the dignity which becomes them; to favour the establishment of a national bank upon a solid basis; to retrench (after having allowed them a just indemnity) those civilians and military who incumber uselessly the state; to protect individual property; to cause to be executed all public works of acknowledged utility; to protect commerce, the sciences, and the arts; to promulgate a law sanctioned by the chamber, which reduces very materially the custom-house duties; to promote equally an ecclesiastical reform, which is very needful, and which I hope to accomplish: in one word, to make all the advantageous alterations which the hope of your approbation has given me the strength to undertake, and will enable me to execute.

Accept, Sir, the assurance of my perfect esteem, and my anticipated gratitude for the reply which I hope from your goodness.

(Signed) BERNAR. RIVADAVIA.

Buenos Ayres, 26th August 1822.

2. (Copy.) — *José del Valle, Guatelama, to Jeremy Bentham.*

SEÑOR, — Sus obras le dan el titulo glorioso de legislador del mundo. Los que han sido llamados por sus destinos á formar ó discutir projectos de codigos civiles ó criminales han pedido luces a V.; y yo tengo mas que otros necessidad de ellas.

La Assemblea de este Estado de Guatemala se ha servido nombrarme individuo de la comision que debe formar nuestro codigo civil. Yo he vuelto los ojos a V. y sus dignas obras. Tengo algunas; me faltan otras; y sus pensamientos serian por mi de precio infinito.

Permitame V. le suplique vuelva su atencion á una republica que acaba de nacer, y cuia felicidad me intereza en el grado mas alto. Sirvase comunicarme sus pensamientos. Sabrá apreciarlos quien ofrece á V. los respetos y consideracion con que tengo el honor de ser su mas ato. serv. JOSE DEL VALLE.

A Mr. Jeremias Bentham.

(TRANSLATION.)

SIR, — Your works give you the glorious title of legislator of the world. Those whose lot it has been to be called on to prepare, or to discuss, projects of civil or criminal code, have requested your guidance; I, more than any, feel the want of it.

The Assembly of this State of Guatemala has been pleased to name me a member of the committee for forming our civil code. I turn my eyes to you and your excellent writings: some I have, others I have not; but your thoughts would be of infinite value to me.

Allow me, then, to entreat you will turn your attention to this newly-born republic, whose happiness is of the highest interest to me. Kindly communicate your ideas, which will be duly appreciated by him who offers you all the respect and attention with which, &c. &c. (Signed) JOSE DEL VALLE.

To Mr. Jeremy Bentham.

*** In Brazil, a little before the act of despotism, or say the revolution, by which the Emperor dissolved the Cortes, shipping off the supposed democratically disposed members, some to the Peninsula, others to Goa, in Hindostan, Jose Bonifacio d'Andrade, the then prime minister, made no secret of his intentions, on the meeting of the Cortes, to move that application should be made to Mr. Bentham for his assistance in the formation

of a code for that state. This intention of his had been twice declared in conversation, with William Effingham Lawrence, Esq., who, in a vessel of his own, touched at Rio Janeiro, in his way to Van Diemen's Land. This information is contained in a series of highly interesting letters, written from thence by Mr. Lawrence to Mr. Bentham.

These letters, with the two passages to the above effect in them, were seen by several of Mr. Bentham's friends; but, having been lent out or mislaid, cannot at this moment be recovered. The passages particularly in question were scarcely longer than those here employed in giving intimation of them. But in those same letters there was a great deal more about the cognizance taken of Mr. Bentham's works by the statesmen in question, and others belonging to different parties. — *Ed. of original Edition.*

END OF VOLUME IV.